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No. 07-

IN THE

Supreme Court of the United States

SHAREN and MICHAEL GRAVELLE,

Petitioners,

v.

HURON COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES and THE CRADLE SOCIETY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH APPELLATE DISTRICT, HURON COUNTY, OHIO

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Huron County, Ohio Juvenile Court held that the adoptive children of Petitioners Sharen and Michael Gravelle were abused and/or dependent. The Court terminated the Gravelles' parental rights.

Two questions are presented:

1. Can children be declared abused when there is no evidence of physical, emotional and/or psychological abuse, when the only evidence was of "potential abuse" and when there is no statutory definition of child abuse?

2. Can a court terminate parental rights when only a few months have passed between the adjudication of abuse and the state's motion for permanent custody and when the state makes no reasonable effort at reunifying the family?

LIST OF PARTIES

The Petitioners are Sharen and Michael Gravelle. Respondents are the Huron County Department of Jobs and Family Services and the Cradle Society.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF APPENDICES	iv
TABLE OF CITED AUTHORITIES	v
OPINION BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION	9
I. REVIEW IS WARRANTED BECAUSE THE DEFINITION OF CHILD ABUSE IN OHIO IS UNCONSTITUTIONALLY VAGUE.	10
II. REVIEW IS NECESSARY BECAUSE THE PETITIONERS' PARENTAL RIGHTS WERE TERMINATED IN VIOLATION OF THEIR FUNDAMENTAL FOURTEENTH AMENDMENT RIGHTS AND STATE STATUTES.	13
CONCLUSION	27

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The Court Of Appeals Of Ohio, Sixth District, Huron County Decided March 14, 2007 ..... 1a

Appendix B — Judgment Of The Huron County Common Pleas Court, Juvenile Division, Norwalk, Ohio Filed March 20, 2006 ..... 35a

Appendix C — Judgment Of The Huron County Common Pleas Court, Juvenile Division, Norwalk, Ohio Dated December 10, 2005 ..... 55a

Appendix D — Order Of The Supreme Court Of Ohio Denying Appeal For Review Decided June 20, 2007 ..... 67a

TABLE OF CITED AUTHORITIES

Page

Cases:

City of Shaker Hts. v. Wright (1996),
1996 WL 355309 11

In the Matter of Ashley Thomas (2003),
2003 Ohio App. LEXIS 5230 26

In the Matter of Jason Caine and Loretta Whyde (2004),
2004 Ohio App. LEXIS 2035 26

In the Matter of Joseph Knuckles (2003),
2003 Ohio App. LEXIS 3926 26

In the Matter of Katelyn Lewis (2003),
2003 Ohio App. LEXIS 4763 26

In the Matter of Mercy Anne Gravelle, et al.,
Huron County Juvenile Court,
Case Nos. DNA 2005-0056-0066 1

In the Matter of Mercy Anne G., et al.,
Ohio Sixth District Court of Appeals,
Case Nos. H-06-007-017 1

In the Matter of Noftz (1986),
1986 WL 9098 ..... 11, 12

In the Matter of Rashaun B. (2004),
2004 Ohio App. LEXIS 6812 ..... 24, 25

Cited Authorities

Page

In re Barrett (1998),
1998 WL 107760 10

In re Brown (1994),
98 Ohio App.3d 337 ..... 16, 17

In re K.S. (2004),
2004 Ohio App. LEXIS 2370 ..... 22, 23

In re Lay (1987),
43 Ohio App.3d 78 24

In re Mercy Anne G. (2007),
114 Ohio St.3d 1428 1

In re Myers (2004),
2004 Ohio App. LEXIS 951 26

In re Schuermann (1991),
74 Ohio App.3d 528 10

In re Stacey S. (1999),
136 Ohio App.3d 503 25

Lehr v. Robertson,
463 U.S. 248 (1983) 9

Palmore v. Sidoti,
466 U.S. 428 (1984) 9

Cited Authorities

	Page
Quilloin v. Walcott, 434 U.S. 246 (1978)	25
Santosky v. Kramer, 455 U.S. 745 (1982)	9
Stanley v. Illinois, 405 U.S. 645 (1972)	24
State v. Bogan (1990), 1990 WL 80572	10
State v. Burdine-Justice (1998), 125 Ohio App.3d 707	10
State v. Ivey (1994), 98 Ohio App.3d 249	10
Troxel v. Granville, 530 U.S. 57 (2000)	9

Cited Authorities

Page

Statutes:

28 U.S.C. Section 1257 1

Ohio Revised Code Section 2151.03(B) and (D) .. 2, 10

Ohio Revised Code Section 2151.414 ..... 2, 13

Ohio Revised Code Section 2151.414(B)(1)(a) ... 13

Ohio Revised Code Section 2151.414(D) 13, 14

Ohio Revised Code Section 2151.414(D)(1)-(4) .. 13

Ohio Revised Code Section 2151.414(E) 15, 25

Ohio Revised Code Section 2151.414(E)(1)-(16) ... 14, 25

Ohio Revised Code Section 2151.419 ..... 3, 16

Ohio Revised Code Section 2151.419(A)(1) 14

Ohio Revised Code Section 2919.22(A) and (B) 2, 10, 12

Cited Authorities

Page

Constitutional Provisions:

Fourteenth Amendment 1

Miscellaneous:

Ohio Administrative Code Ann. 5101:2-42-95(D) ... 21

OPINION BELOW

On December 10, 2005, the Huron County, Ohio Juvenile Court ruled in this child custody case that eight of eleven children living in the home of Michael and Sharen Gravelle were abused and all eleven were considered dependent. *In the Matter of Mercy Anne Gravelle, et al.*, Huron County Juvenile Court, Case Nos. DNA 2005-0056-0066. On March 20, 2006, the same court granted permanent custody of all eleven children to the State of Ohio, stripping the Gravelles of their parental rights. On March 14, 2007, the Ohio Court of Appeals for the Sixth Judicial District in Toledo, Ohio affirmed both the abuse/dependency ruling and the permanent custody ruling. *In the Matter of Mercy Anne G., et al.*, Court of Appeals Case Nos. H-06-007-017. On June 20, 2007, the Ohio Supreme Court declined to hear the appeal by the Gravelles. *In re Mercy Anne G.* (2007), 114 Ohio St.3d 1428. See Appendices A-D.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment Due Process Clause.

Parents' liberty interest in raising their children.

> The parents' fundamental liberty interest in the care, custody and management of their children is protected by the Fourteenth Amendment and does not evaporate simply

because they have not been model parents. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair proceedings.

Ohio Revised Code Section 2151.03 (B) and (D)

This section of the Ohio Revised Code purports to define child abuse, but defines it by defining "child endangering" pursuant to Ohio Revised Code Section 2919.22(A) and (B)(4), which are criminal statutes. There is no statutory definition of child abuse, per se, and the appellate courts in Ohio have defined it in a number of different ways.

Ohio Revised Code Section 2151.414

This section of the Ohio Revised Code sets forth the procedures and standards for termination of parental rights. In determining whether to terminate parental rights, the Court must determine, by clear and convincing evidence, that it is in the best interest of the children to be in the permanent custody of the state and that the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parent.

Ohio Revised Code Section 2151.419

This section of the Ohio Revised Code states that prior to a court granting a termination of parental rights, the state mus' prove that it has made reasonable efforts to reunite a family from whom children have been taken.

STATEMENT OF THE CASE

1. This case garnered worldwide news media attention when it first became public. It became known as the "Caged Kids" case and throughout the court proceedings, it has been front-page news, at first because of the allegations that Petitioners Sharen and Michael Gravelle kept their children in cages, and later because of the debate, both legal and sociological, about how adoptions take place, the state's role in approving and supervising adoptions, how families handle adoptive children with severe behavioral problems, the definition(s) of child abuse and the remedies when abuse is found.

Despite the knee-jerk reaction of the public and the Huron County, Ohio governmental system, this case involves complicated and heavily-disputed factual and legal issues that apply to adoptions and allegations of child abuse across the United States. Although in many respects it is factually unique, this case has reverberated throughout the state of Ohio and the country. Social services agencies, foster and adoptive parents, juvenile courts, litigants and the public need to know, with certainty, the definition of child abuse, the difference between legitimate discipline and abuse and the proper circumstances for permanently removing children from their parents.

Further, termination of parental rights cases are of critical importance and, since these cases impact on the Petitioners' constitutional rights to familial association, they should be closely scrutinized.

This Court should hear this case because, behind the glaring headlines lie some serious legal issues, and behind the "Caged Kids" moniker reside eleven children and two parents, whose fate should be decided by the highest court in the land. Both the trial court and the state Court of Appeals unfairly painted the facts of this case and the resultant conclusions create law that is improper and sends an unduly harsh message to adoptive parents and social service agencies who regularly deal with behaviorally challenging children.

2. This case centers around the eleven children of Michael and Sharen Gravelle of Wakeman, Ohio in Huron County, Ohio, which is located about half way between Cleveland and Toledo. Ten of the eleven, ages 3-14 when removed, were adopted by the Gravelles and the eleventh, Mercy Anne Gravelle, age 1 at the time of removal, was in the pre-adoptive custody of the Gravelles. Most of the children have special needs, ranging from Reactive Attachment Disorder (RAD) to Fetal Alcohol Syndrome to Downs Syndrome to AIDS to PICA, a condition which causes the child to eat non-food items. These conditions existed at the time the Gravelles adopted these children, who had all been removed from their birth families due to various problems including heavy drug use by the birth parents, frequent movement, abandonment, domestic violence, physical and emotional abuse, minimal pre-natal medical care, cocaine addiction at birth, severe learning and language disabilities, multiple temporary foster care placements, possible sexual abuse and developmental delays.

As the Gravelle family grew, these conditions manifested themselves in bizarre, extreme behavior. Several of the children would get out of bed at night and roam the house causing trouble; they would set fires in the kitchen, run out of the house, dangle one of the younger children out of a second-story window; sucker-punch a sleeping brother or sister, dig holes in walls, play with electrical wires, eat non-food items such as batteries, and urinate and defecate all over the house, including down heating grates. These behaviors took place mostly at night, after the children were in bed and the Gravelles had gone to bed. This was all going on prior to any enclosures or alarms being installed, and the Gravelles tried numerous methods to control and contain the behavior prior to putting up enclosures on the beds.

As these problems became more and more prevalent, the Gravelles sought help; they contacted Huron County and the various counties from which the children were adopted. They contacted experts, they looked for answers on the Internet. In one instance, two siblings were removed from the Gravelle home, at the request of the Gravelles, when it was discovered that these children were sexually molesting other children in the home. Two other children were sent temporarily to the pediatric psychiatric unit of the Medical College of Ohio for evaluation. Between 1998-2002, employees of the Huron County Department of Jobs and Family Services ("the County") were regularly in the Gravelle home monitoring the adoptions, so the County knew about the behaviors and the Gravelles' interventions.

In approximately 2002, the Gravelles began seeing Elaine Thompson, a licensed independent social worker who had a long career dealing with RAD and Fetal Alcohol children.

Ms. Thompson began seeing Mrs. Gravelle and several of the children and then, for approximately two years, she went to the Gravelle home on a weekly basis, staying for an entire day at a time, counseling the children and Mr. and Mrs. Gravelle and treating the children with a procedure called neurotherapy.

The County knew that Ms. Thompson was the Gravelles' therapist and approved of her treatment plan; Ms. Thompson regularly reported to the County and received payment via the PASSS program, a government aid program available to adoptive parents.

Some time in 2003, the Gravelles began attempting to restrict the children's movement at night; some of the children slept in bunk beds, and Mr. Gravelle put wooden slats around the beds, with a door at the end and an alarm that went off if the child got out of bed in the middle of the night.

The children figured out how to reach through the openings between wooden slats and disarm the alarms, which would then allow them to get out of bed without their parents knowing.

So Mr. Gravelle, in an effort to prevent the children from getting out of bed undetected, placed chicken wire around some of the beds so that the children could not reach through any openings to disarm the alarms. These beds—which were normal bunk beds of normal length—had wooden doors at the end, with alarms that could be set by the parents at night. None of the beds contained locks of any kind. So if a child got out of bed at night, the alarm would alert the parents, who would then go the child's bed to assure that the child was getting out of bed for a proper reason, such as going to the bathroom, and not for improper reasons.

While enclosing the children at night did not resolve any of the behavioral issues on a long-term basis and was not intended to therapeutically address the children's medical, emotional or behavioral conditions, the enclosures did essentially prevent the nighttime marauding in which the children had been engaging, giving the children and the Gravelles a sense of safety.

It is important to note that enclosed beds are regularly used in hospitals to keep patients, both children and adults, from falling out of bed and from wandering.

Also, Ms. Thompson knew about the enclosed beds and testified that she understood the necessity for such measures.

It is also important to note that as of 2003, the County knew about the enclosed beds, and came to the Gravelle home to investigate. No formal investigation was ever opened at that time and no one told the Gravelles that enclosing the beds was in any way improper.

In August and September, 2005, the County investigated the Gravelles and as a result of a falsified search warrant affidavit, on September 9, 2005, the children were removed and placed in the custody of the County amid a storm of local, national and international publicity, which inaccurately portrayed the Gravelles as keeping their children locked in two and one-half by three and one-half feet dog cages, when in fact the enclosures were full-sized bunk beds and there were not locks on the beds, only alarms. Rather than discussing with the Gravelles alternative ways in which the children's behavior could be controlled, the County—despite not seeing any evidence of physical, psychological or emotional abuse at the time of removal and having

deliberately failed to contact Ms. Thompson to see if she knew about the enclosed beds and if she found them to be acceptable—over-reacted by removing the children and filed abuse, neglect and dependency charges against the Gravelles.

The Huron County Juvenile Court eventually found the children to be abused and dependent and granted the County's motion for permanent custody, thus stripping the Gravelles of their parental rights. The Ohio Sixth District Court of Appeals affirmed those judgments and the Ohio Supreme Court declined to review the case.

The Court of Appeals erred in affirming the Huron County Juvenile Court, because 1) the children were not abused and/or dependent; and 2) even if they were properly held to be abused and/or dependent, granting permanent custody to the County was in error because the County did not make reasonable efforts at reunification and permanent custody was and is not in the best interests of the children. In fact, the County removed the children from the only stable, permanent home most of them had known and placed them all in foster care, where many of them have been moved around multiple times since their removal and from which most have little chance at being re-adopted. The Gravelles love their children; but they had to take some unusual measures, including strict disciplinary measures (which were overblown at every turn, to the court, to the sheriff's office, to the news media) to raise these children.

Even if the Gravelles are ultimately found to have abused the children, the conditions have since been corrected, but the Gravelles were never given another opportunity to reunite with their children. Instead, less than four months after removing the children from the Gravelle home, the County

decided to seek permanent custody, and two months after that, the Juvenile Court granted the motion for permanent custody. This is not enough time for either the County or the Court to determine that (assuming abuse had taken place) reunification was not possible or desirable.

REASONS FOR GRANTING THE PETITION

While family law has traditionally been under the jurisdiction of state courts, this Court has from time to time addressed important constitutional and statutory issues raised by family law cases, especially when the rights of parents and children are at stake and when by taking such cases, this Court can clarify the standards and procedures which public child welfare agencies, courts and litigants must use.

For example, in *Santosky v. Kramer*, 455 U.S. 745 (1982), this Court took a case in the same procedural posture as this case, i.e., reviewing a state appellate court when that state's Supreme Court had denied review, and held that in termination of parental rights cases, the "clear and convincing" standard must be used, rather than "preponderance of evidence."

In *Troxel v. Granville*, 530 U.S. 57 (2000), this Court ruled on the issue of grandparents' rights in child custody matters.

In *Lehr v. Robertson*, 463 U.S. 248 (1983), this Court ruled on biological parents' rights to veto an adoption by a step-parent.

In *Palmore v. Sidoti*, 466 U.S. 429 (1984), this Court determined a mother's fitness to parent her child, which fitness had been called into question when she married a man of another race.

I. REVIEW IS WARRANTED BECAUSE THE DEFINITION OF CHILD ABUSE IN OHIO IS UNCONSTITUTIONALLY VAGUE.

Pursuant to Ohio Revised Code (O.R.C.) Section 2151.031(B) and (D), in order to prove abuse, Huron County must show that the children are endangered as defined by O.R.C. 2919.22(A) and (B)(4). Because the Ohio Supreme Court has never defined child abuse and different appellate courts in the state have defined it in different ways, the definition of child abuse is constitutionally void for vagueness in that a litigant cannot know in advance what encompasses child abuse with any certainty.

In *State v. Burdine-Justice* (1998), 125 Ohio App.3d 707, the Ohio 12th District Court of Appeals cited approvingly the definition of child abuse used by the Ohio 8th District Court of Appeals in *State v. Ivey* (1994), 98 Ohio App.3d 249: "Child abuse is defined as 'an act which inflicts serious physical harm or creates a substantial risk of serious harm to the physical health or safety of the child.'" *Burdine-Justice* at 714, citing *Ivey* at 257. The "serious physical harm" language for O.R.C. 2919.22(B)(1) is also accepted by the Ohio 3rd District Court of Appeals (*In re Schuermann* (1991), 74 Ohio App.3d 528); the Ohio 1st District Court of Appeals (*In re Barrett* (1998), 1998 WL 107760); the Ohio 2nd District Court of Appeals (*State v. Bogan* (1990), 1990 WL 80572); and the Ohio 8th District Court of Appeals in *Ivey*, *supra* (in which the Court ruled that a 10-year-old boy's injuries of a bruised left eyelid, bruises, welts and lacerations caused by a disciplinary belt whipping on the buttocks and lower legs, and a swollen hand, did not cause the child serious physical harm or threaten substantial risk of same, thus the sufficiency of the evidence did not support the offense of

child endangering) and *City of Shaker Heights v. Wright* (1996), 1996 WL 355309. Under this definition, there would be insufficient evidence of child abuse to warrant a finding of abuse in this case, as most of the evidence against the Gravelles revolved around "potential harm," rather than "serious physical harm."

The Ohio 6th District Court of Appeals also leans toward the "serious physical harm" definition of child abuse: In *In the Matter of Noftz* (1986), 1986 WL 9098, the Ohio 6th District Court of Appeals outlined a balancing test, weighing the seriousness of the harm against the underlying circumstances.

The *Noftz* court found that any definition of child abuse

> . . . would necessitate the trial court reviewing the totality of the circumstances to determine whether there has been sufficient physical, mental and psychological harm to the child to permit a finding of abuse. . . . In making the determination of abuse, the trial court must look at the circumstances giving rise to the harm to the child, the disciplinary measures employed by the parent, the child's past history and any other potentially relevant factors. Of importance when evaluating the physical harm to a child is whether the nature of the physical harm is warranted based upon the underlying circumstances. Clearly, parents are entitled to utilize disciplinary measures for their children, however such discipline must not be of such gravity that it becomes unreasonable in light of the underlying cause. These factors are necessary for the determination that a child has

> been abused under R.C. 2919.22(B)(1). The same factors would be evaluated pursuant to R.C. 2919.22(B)(3) and (4). See, also, R.C. 2901.01 [this section provides definitions for physical harm to persons, serious physical harm to persons, risk and substantial risk].

Noftz at 4.

After analyzing the facts of the case at hand, the *Noftz* court concluded: "Though we recognize at times there may be instances where a child may be slapped three times, the resulting injury to the child, the circumstances giving rise to the incident, and the *potential serious harm which may have occurred to the child* clearly support the trial court's finding in this case." *Noftz* at 6, emphasis added.

In this case, there was no evidence of serious physical or emotional harm; the state's experts testified that in evaluating the children after their removal, they saw the enclosed beds and Gravelles' discipline as potentially causing emotional or psychological harm. They speculated, based on seeing the children after removal, that the children had to have been harmed, even though they testified that the children seemed, by and large, to be fine. There was not clear and convincing evidence of any type of harm, much less serious physical harm. This Court should accept this case, if for no other reason than to clarify the definition of child abuse.

II. REVIEW IS NECESSARY BECAUSE THE PETITIONERS' PARENTAL RIGHTS WERE TERMINATED IN VIOLATION OF THEIR FUNDAMENTAL FOURTEENTH AMENDMENT RIGHTS AND STATE STATUTES.

Termination of parental rights should only be granted if, after all reasonable efforts are made to reunite a family, it is determined by clear and convincing evidence that it is in a child's best interest to be placed in the permanent custody of the state, and only after enough time has elapsed to assure that the parents cannot or should not be given another opportunity to reunite with their children.

A trial court conducting a hearing on a motion for permanent custody must follow the guidelines set forth in O.R.C. 2151.414. The court may grant such a motion if the court determines by clear and convincing evidence that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion and that the child cannot be placed with either parent within a reasonable time or should not be placed with the parent. O.R.C. 2151.414(B)(1)(a).

When determining what is in the child's best interest, O.R.C. 2151.414(D) mandates that the court consider all relevant factors, including the relationship between the child and the parents; the wishes of the child; the custodial history of the child; the child's need for a legally secure placement and whether that can be achieved without a grant of permanent custody. O.R.C. 2151.414(D)(1)-(4).

In determining whether a child cannot be placed with either parent within a reasonable period of time or should

not be placed with the parents, the court shall consider all relevant evidence, including whether the parents have "failed continuously and repeatedly to substantially remedy those conditions [that led to removal]"; whether the parents have demonstrated a lack of commitment to the children by failing to regularly support, visit or communicate with the child; or whether the parents are unwilling to provide food, clothing and shelter or to prevent the child from suffering physical, emotional or sexual abuse or neglect. O.R.C. 2151.414(E)(1) through (16). If the court determines that one or more of these factors exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

The court must also determine whether the agency filing the permanent custody motion "has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." The agency shall have the burden of proving that it has made those reasonable efforts. O.R.C. 2151.419(A)(1).

In this case, assuming arguendo the propriety of the abuse/dependency rulings, permanent custody is not in the best interests of the children and the County did not made reasonable efforts to prevent the removal or to reunify.

The County cannot meet its burden to prove any of the O.R.C. 2151.414(D) factors: There was, at the time of the permanent custody ruling, continued interaction between the parents and the children and between the children; the wishes of the children do not give clear indication since some want to go home, others don't and still others have changed their

minds repeatedly; the custodial history of the children before their adoption by the Gravelles and since removal indicate that permanent custody would create a substantial risk of continued long-term foster care for most of the children; and they all need a legally-secure permanent placement, which they had in the Gravelle home.

The County also did not meet its burden to prove the O.R.C. 2151.414 (E) factors: There is no evidence that the Gravelles have "failed continuously and repeatedly to substantially remedy the conditions" causing the removal. In fact, the opposite is true; at the time of the permanent custody ruling, they had remedied the physical conditions in the home that led to removal, and had begun the process of remedying the other conditions that were identified during the adjudicatory hearing and by the Court in its December 22, 2006 opinion. The parents had not been able to utilize the services provided by the County, because by and large, no services were offered. The County has never offered financial resources, counseling or any other services intended to assist the parents in "resuming and maintaining parental duties" because the County never really wanted the Gravelles to resume and maintain their parental duties. All efforts by the County were to gather evidence of the Gravelles' unfitness and to create obstacles for the Gravelles. There was no evidence of the Gravelles' failure to regularly visit the children and in fact, the Gravelles tried several times to increase the frequency and duration of the visits and to move them to a more amicable location. Each time, the County opposed these efforts. There was no evidence of the Gravelles being unwilling to provide food, shelter or basic necessities. And there was no evidence that the abuse found by the Court was so serious or likely to recur that placement with the Gravelles would be a threat to the children's safety. Finally, there was no evidence of the County making a reasonable effort to reunify.

As the Ohio 6th District Court of Appeals stated in *In re Brown* (1994), 98 Ohio App.3d 337, 344, 648 N.E.2d 576 in reversing a trial court's grant of permanent custody:

> . . . It is clear, however, that appellee made only minimal efforts to reunify Nichole with her family. The case plan set forth by appellee in this case stated only the most general of goals, and these goals were directed mainly toward altering behaviors of Amy and Marvin Brown. However, the only recommendations in the case plan which related to the parent-child relationship were that the "parents will attend all regularly scheduled visits," and that the "parents will not fight physically or verbally in front of Nichole." Curiously, there is no competent evidence in the record that would suggest that Amy and Marvin Brown maintain any type of relationship with one another, nor that Nichole is or ever has been affected by any altercations between her parents, save some problems which occurred around the time of their divorce approximately nine years ago. As to "regularly scheduled" visitation, it was shown at the hearing that there were never any regularly scheduled visits. Rather, Amy and Marvin were directed to call and set up visits, but no more often than once a week, and for no longer than one hour. Furthermore, these visits were to be supervised by appellee's employees, *in settings totally nonconducive to maintenance or development of close parent-child relations*. . . .

R.C. 2151.419 requires a determination as to whether an agency made reasonable efforts to

> prevent removal or to "make it possible for the child to return home." The court made no such finding in this case. Moreover, based on our review of the record, we find it clear that appellee was not diligent in its attempts to reunite Nichole with either of her natural parents. The assignment of error is sustained.

In re Brown (1994), 98 Ohio App.3d 337,344, 648 N.E.2d 576 (emphasis added).

In this case, the case plans are equally vague, the visitations were equally nonconducive to maintenance or development of close parent-child relations and the County was not diligent in its efforts to reunify.

The County made a decision, by consensus, to seek permanent custody as of early December, 2005, less than three months after removal and prior to the adjudicatory hearing. Yet they gave the Gravelles and the trial Court a phony case plan on December 30, 2005 calling for reunification and then filed a new case plan six business days later calling for permanent custody, citing the Gravelles' lack of cooperation as a prime reason.

It would have been difficult for the Gravelles to completely cooperate with the case plan from the time it was filed on October 7, 2005 since at that time they were fighting the allegations of abuse, neglect and dependency and the case plan called for them to acknowledge the abuse. Had they won that battle, following a case plan would have been unnecessary. Once the Juvenile Court issued its abuse and dependency ruling on December 22, 2005, the Gravelles had only three weeks, from December 22, 2005 until January 11,

2006, when the last case plan was filed, to cooperate with the October 7 case plan, and even that would have been futile because the decision was made by the County in early December, 2005, to seek permanent custody.

It is unfair to equate the Gravelles' actions between removal on September 9, 2005 and the abuse/dependency ruling on December 22, 2005 with parents who stipulate to abuse, neglect or dependency. The Gravelles had every right to deny those charges and to fight them. To expect them to in essence admit to abuse and accept a case plan while at the same time fighting those very same charges would be unrealistic and unfair. It is similarly unfair to hold them responsible for "lack of cooperation" with a case plan prior to the date of adjudication, December 22, 2006.

Of course unbeknownst to the Gravelles, even prior to the adjudicatory hearing, the County had decided to move for permanent custody. So no matter what the Gravelles did to cooperate after the adjudicatory hearing decision, it would not have mattered. By the time the Gravelles began following the road map provided by the Court on December 22, 2005, i.e., deconstructing the beds, beginning the process of getting psychological evaluations, getting counseling, etc., the County had already pulled the plug.

Rather than trying to help the Gravelles get their kids back, the County, from the very beginning in September, 2005 and certainly from at least the beginning of December, 2005, was acting in furtherance of its real goal, to get the kids away from the Gravelles permanently. The whole notion of reunification was a sham. The County wanted the Gravelles and the Juvenile Court to think reunification was the goal when in reality, permanent custody had been the goal from

as early as the first week in December, 2006. All testimony aimed at proving the Gravelles were uncooperative or lacking in parenting skills at visitations should be seen in this light.

Rather than help the Gravelles by offering resources, either financial or psychological, the County focused on building a case against the Gravelles, both juvenile and criminal, both before and after removal. Every contact between the Gravelles and the County has been monitored, recorded and noted, with the goal of using all information to testify against them. Nothing was done to help them reconfigure their home; nothing was done to help them cope with the loss of their children; nothing was done to encourage the children to believe they would soon be coming home; nothing was done to encourage or foster ongoing contact and bonds between parents and children; nothing was done to keep the Gravelles informed of medical issues, school issues or living arrangements. Visitations were used as evidence against the Gravelles, rather than as opportunities to help the Gravelles and the children. The County used the news media and planted lies and distortions, then turned around and blamed the Gravelles for using the news media to respond. The County is the entity with constitutional and statutory responsibilities. Instead of providing the Gravelles with the resources, financial and medical, that they might have needed to come into the County's view of compliance, the County paid the foster parents twice as much in subsidies as the Gravelles were receiving in post-adoption subsidies (not to mention mileage reimbursements, clothing allowances and school fees), giving the foster parents raises when the foster parents complained. Instead of giving the Gravelles access to psychologists and social workers, the County gave the foster parents, in essence, 24-hour hotlines to social workers and psychologists for help with day-to-day

behavioral problems the children were having. The foster parents got respite care and transportation to and from medical appointments. Had the County offered even some of those services to the Gravelles, either in years past when the Gravelles called for help, or at the time of (and instead of) removal, the children could have stayed at the Gravelle home and the situation causing concern could have been remediated. That would have been in the best interest of the children rather than ripping them from the only home they had known and placing most of them in what could be an endless cycle of foster care.

These children had been abused and neglected from birth, which is why they were up for adoption. The Gravelles adopted them and gave them a home when literally, no one else would take them. Now, if the state appellate court's order stands, they will have to be adopted all over again. And most of them will be even harder to place than they were when placed with the Gravelles, due to their ages.

The social workers acknowledged the difficulty in adopting out most of these children, and the foster parents acknowledged that they probably will not adopt these children. So what is their future? Not only does no one know, but no one seems to care. The testimony of the social workers was that it really didn't matter if the kids get adopted or end up in long-term foster care; anything is better than going back to the Gravelles. After such a short period of time, this cannot be in the best interest of the children and this cannot be the intent of the statute that requires a county agency to make reasonable efforts to reunify families.

The County has an obligation to plan for the children's futures at the point of moving for permanent custody.

According to the Ohio Administrative Code, "[a]t the time a motion is filed with the court to obtain permanent custody of the child, the PCSA (Public Child Services Agency) . . . shall submit a case plan to the court which includes a specific plan to seek an adoptive family or planned permanent living arrangement for the child and to prepare the child for adoption or permanency with a specified individual." OAC Ann. 5101:2-42-95(D).

The County is in violation of that provision: In the January 11, 2006 case plan, on page 10, under the heading, "Documentation of Efforts for Permanency:" the case plan instructs as follows: "For a child who is in the custody of the agency and whose goal is adoption or a planned permanent living arrangement, the agency must document the steps it has taken to locate a permanent living arrangement." It then says: "Document steps taken to find an adoptive home, relative, legal guardian or other permanent placement for the child." The County's answer in the case plan is: "The agency will be filing a motion for permanent custody." The case plan then says: "Describe the child-specific recruitment activities by the agency and the outcomes." The agency answered: "The agency has completed a home study on an interested relative."

This falls far short of the requirements of the Ohio Administrative Code and indicates a lack of planning by the County and hence, why granting permanent custody would be an error.

From December 22, 2005, when the trial court's opinion was issued on adjudication, until February 22, 2006, when the dispositional hearing began, the Gravelles made every effort to comply with court orders; they reconfigured the beds, repaired a hole in a wall, changed smoke detector batteries,

fixed a doorway to one of the bedrooms; they started the process of getting a psychological examination with a clinician at their own expense; they began parenting classes; they attended visitations and asked for more; they allowed County employees into their home on several occasions; they refrained from talking about specifics of the case to the news media; they did not talk about the case to the children. In two months, they did more to achieve reunification than many families do in a year.

In other Ohio cases in which grants of permanent custody have been upheld, the circumstances were much more serious and long-standing, the agency attempts at reunification were much more obvious, parental lapses more pronounced and the time frames given to the parents prior to permanent custody being requested were much longer.

Conversely, in cases in which the Ohio courts have overturned grants of permanent custody, it is because of conduct by agencies much like what happened here or in cases in which the conduct of the parents is much more egregious than that displayed by the Gravelles.

For example, in *In re: K.S.*, the child at issue had already been removed from the home once because of neglect. The child was taken to a hospital after swallowing Pine-Sol and it was discovered that the child had bruises all over her body and had evidence of shaken baby syndrome. The child was adjudicated abused and dependent and placed in the temporary custody of the county. Nine months later, the county moved for permanent custody and four months later the parent moved for a six-month extension of temporary custody, which was granted by the court on the grounds that the parent had made significant progress in the case plan.

Six months later (now 17 months after the filing of the complaint) the parent moved for another six month extension and four months after that the trial court granted permanent custody.

In reversing the trial court's grant of permanent custody, the appellate court said:

> The Court has carefully considered the evidence presented upon the question before us. Cases involving the termination of parental rights are, by nature, difficult and of critical importance. This case is particularly difficult because of the conflicting and — in some cases — problematic — opinions expressed by the witnesses, the needs of the child and the limited opportunity of appellant to demonstrate her ability to provide care for the child. But the termination of parental rights requires clear and convincing evidence that it is in the best interest of the child. This Court is convinced that such a conclusion has not been sufficiently supported by clear and convincing evidence in the present case. Based upon the record before this Court, this Court concluded that appellant's second assignment of error is sustained.

In Re: K.S., 2004 Ohio App. LEXIS 2370 (Ninth Dist. App., May 26, 2004) at 38.

In that case, despite a prior history of the child having been removed, despite serious medical evidence of abuse, despite a long period of time elapsing between the filing of the complaint and the permanent custody hearing, the

appellate court ruled that the parent had not been given enough of an opportunity to demonstrate her ability to care for the child and that there was conflicting testimony as to the best interests of the child.

In this case, at the time of the hearing, it had only been five months since removal, four months since the first case plan, two months since the abuse/dependency ruling and a little over one month since the permanent custody filing. The Gravelles were not given a reasonable opportunity to comply with case plan, regardless of which case plan is used.

Another instructive case came from the Ohio Sixth Appellate District. In *In the Matter of Rashaun B.*, the appellate court reversed a grant of permanent custody. The child in that case had been removed based on the parent's alleged mental issues and because the child had allegedly been shaken. More than one year later, the county moved for permanent custody, by which time the parent had completed anger management classes, parenting classes and was enrolled in a GED class.

The court said:

> The right of a family to remain intact is constitutionally protected. *Stanley v. Illinois* (1972), 405 U.S. 645 (additional citations omitted). Judicial decisions terminating parental rights are carefully scrutinized. Permanent removal may be condoned, "only where there is demonstrated an incapacity on the part of the parent to provide adequate parental care, not better parental care, should parents be deprived of custody." *In re Lay* (1987), 43 Ohio App. 3d 78,82,

> 539 N.E.2d 664 (additional citations omitted). "Before any court may consider whether a child's best interests may be served by permanent removal from his or her family, there must first be a determination that the parents are 'unfit.'" *In re Stacey S.* (1999), 136 Ohio App. 3d 503, 516, 737 N.E.2d 92, citing *Quilloin v. Walcott* (1978), 434 U.S. 246.
>
> In Ohio, the equivalent of parental unfitness for a child who is not abandoned or orphaned is a statutory determination that the child, ". . . cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. . . ." R.C. 2151.414(E). To reach such a conclusion, the court must find by clear and convincing evidence that at least 1 of the 16 predicate conditions enumerated in R.C. 2151.414(E)(1) through (16) exists. Such a determination must be made antecedent to any "best interests" analysis. *In re Stacey S.*, supra at 517 (additional citations omitted).

In the Matter of Rashaun B., 2004 Ohio App. LEXIS 6812, Sixth Dist. App., September 22,2004 at 8.

The court went on to conclude that the trial court's findings were not only unsupported by the record, but contradicted by it. Further, the court held that the county had not met its burden to prove by clear and convincing evidence that the parent had failed to substantially remedy the condition which caused the children to be removed from the home. *Id.* at 13.

There are numerous other cases in which Ohio appellate courts have reversed trial courts' grants of permanent custody or where a grant of permanent custody was affirmed where facts and circumstances were much more egregious than those at issue in the present case. These cases include: *In the Matter of Joseph Knuckles*, 2003 Ohio App. LEXIS 3926, Ohio 12th Dist. App., August 21, 2003; *In the Matter of: Jason Caine and Loretta Whyde*, 2004 Ohio App. LEXIS 2035, Ohio 5th Dist. App., March 6, 2004; *In re: Myers*, 2004 Ohio App. LEXIS 951, Ohio 4th Dist. App., March 4, 2004; *In the Matter of: Ashley Thomas*, 2003 Ohio App. LEXIS 5230, Ohio 3rd Dist. App., November 3, 2003; *In the Matter of Katelyn Lewis*, 2003 Ohio App. LEXIS 4763, Ohio 4th Dist. App., September 25, 2003.

When seen in the context of cases both where permanent custody was granted and where permanent custody was reversed, several things become clear; 1) the County did not meet its responsibility to attempt to prevent the removal of the Gravelle children; 2) it was too early in the process to rule that the Gravelles were unfit; 3) it was too early in the process to determine that the best interests of the children could only be served by a grant of permanent custody; 4) the Gravelles should have been given more time to demonstrate their ability to adequately parent these children; 5) the County did not meet its statutory burdens; 6) the County did not make reasonable efforts to reunify nor did it seek a waiver; 7) the evidence of both the Gravelles' unfitness and the best interests of the children is contradictory and does not support a finding of permanent custody; 8) as a result of the foregoing, the Gravelles' Fourteenth Amendment rights to due process involving their familial relations was violated.

This case should be reviewed by the Supreme Court in order to correct the mistakes made by the state courts.

CONCLUSION

For the reasons stated above, Petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX A — OPINION OF THE COURT OF APPEALS OF OHIO, SIXTH DISTRICT, HURON COUNTY DECIDED MARCH 14, 2007

COURT OF APPEALS OF OHIO
SIXTH DISTRICT, HURON COUNTY

Nos. H-06-007, H-06-008, H-06-009, H-06-010, H-06-011, H-06-012, H-06-013, H-06-014, H-06-015, H-06-016, H-06-017

In the Matter of MERCY ANNE G., RIVER JORDAN G., JORDAN RIVER G., ELIJAH G, SERAH G., SIMON G., ABBA G., JONI G., SAMSON G., MICHAEL G., SHAREN G.

Decided March 14, 2007

PIETRYKOWSKI, P.J.

This is an appeal from a judgment of the Huron County Court of Common Pleas, Juvenile Division, that terminated the parental rights of appellants, Sharen and Michael G., and granted permanent custody of their children, River G., Jordan G., Elijah G., Serah G., Simon G., Abba G., Joni G., Samson G., Michael G., and Sharen G., to appellee the Director of the Huron County Department of Job and Family Services ("HCDJFS"). In addition, the court ordered that Mercy Anne G. remain in the temporary custody of the Director of the HCDJFS.

Mr. and Mrs. G.[1] were the adoptive parents of ten of the above named children. At the time that the proceedings were

1. Because two of the children are also named Michael and Sharen, and to prevent confusion, appellants will be referred to as Mr. and Mrs. G. or appellants.

initiated in the court below, appellants were in the process of adopting Mercy Anne and had legal custody of her, but that adoption had not been completed. As a result, appellee the Cradle Society, the legal guardian of Mercy Anne, is a party to these proceedings.

In early August 2005, Jo Johnson, an investigator in the Children Services Unit of the HCDJFS, received a complaint that appellants' children were being kept in cages. Upon determining that an investigation was needed, Johnson discovered that a number of the children had been diagnosed with reactive attachment disorder ("RAD")[2]. She then checked resources and contacted various professionals to determine if keeping children in cages was an appropriate treatment for children with RAD. Johnson could not find any evidence to support such treatment. She then went to appellants' home on September 9, 2005, to continue her investigation. The second floor of appellants' home contains four bedrooms. Johnson first saw the room in which Michael, Samson, Simon and Elijah slept. The room contained two bunk bed like structures constructed of wooden two-by-fours, wooden slats and chicken or rabbit wire. They also contained doors with alarms. The structures were very dark inside and looked like kennels. Johnson also noted the overpowering smell of urine in the entire upstairs of the house. Mr. G. told Johnson which structure was assigned to which child. Johnson noted marks on the wooden slats and Mr. G. explained that Simon had attempted to eat the wood. Johnson also noted that the structure in which Michael slept did not

2. RAD was defined at the adjudication hearing below as "a markedly disturbed and developmentally inappropriate social relatedness in most contexts beginning before the age of five years."

have any mat or mattress, forcing Michael to sleep on the plywood base of the structure. Johnson also did not notice any mattresses, mats or pillows in the other structures.

The second bedroom that Johnson saw belonged to Sharen and Abba. It contained two twin beds with bare mattresses and no blankets or pillows. Johnson next saw the room in which River and Jordan slept. Although the single set of bunk beds in that room was not enclosed as the beds in the first bedroom, the door to the room was constructed of two parts, a lower portion made of wooden slats and an upper portion that was a baby gate. Outside of that room sat a dresser that Mr. G. explained would be pushed in front of the door to prevent the boys from opening the door. Finally, Johnson saw the room in which Serah and Joni slept. That room also contained one set of bunk beds enclosed by wooden slats and chicken wire. Serah slept on the top bunk and Joni slept on the bottom bunk. There was also another bed in the room that the Gs. had planned to use for another child that they hoped to adopt. The chicken wire surrounding Serah's bed had been torn and partially pulled into the enclosure and a wooden board had been nailed on the outside of the hole to prevent Serah from getting out. Johnson then saw Joni peering out through the slats of her enclosure.

Upon leaving the home, Johnson called her supervisor, the police department and the prosecutor's office. After obtaining a search warrant, Johnson returned to the home that evening with sheriff's deputies and removed the children from the home. Initially, the children were taken to the hospital for medical evaluations but were then placed in foster homes.

Appendix A

On September 12, 2005, appellee filed complaints in dependency, abuse and neglect in the court below regarding each child listed above and seeking temporary custody of the children. After subsequent amendments to the complaints, the allegations regarding each child are as follows. All of the children were alleged to be dependent and River, Jordan, Elijah, Serah, Simon, Joni, Samson and Michael were alleged to be abused and neglected. In addition, the subsequent amendments included a prayer for temporary or permanent custody. After an emergency shelter care hearing of September 12, 2005, temporary custody of the 11 children was awarded to appellee and appellants were ordered to deliver all medical records, medications and medical appointment information regarding the children to appellee. Subsequently, the lower court further ordered appellants to deliver to appellee a therapy walker, the children's coats, school clothes and personal effects, and the birth certificates, shot records and all other records needed for school purposes regarding Serah, Elijah and Simon.

On October 7, 2005, appellee filed the first case plan with the court below. The goal of the plan for all children was reunification. The plan set forth numerous concerns and required appellants to participate in parenting classes and counseling, as well as demonstrate age and developmentally appropriate use of discipline for the children. Appellants, however, refused to sign the plan and the plan was never approved by the lower court.

From December 6 to 10, 2005, the case proceeded to an adjudication hearing in the court below. Witnesses who testified for the state included Jo Johnson; Lieutenant Randy

Appendix A

Sommers and Detective James Bracken, who executed the search warrant and took photographs of the home; Michael G., appellants' then 13 year old son, who was found competent to testify following a voir dire examination; Dr. William Benninger, a psychologist who performed current psychological assessments of Michael, Simon, Elijah, Samson and Serah; Dr. Keith Hughes, a psychologist who performed current psychological assessments of Jordan, River, Abba, Sharen and Joni; and Dr. Ronald Hughes, a licensed independent social worker ("LISW") and psychologist who was hired by appellee to help determine the harm or potential harm caused by the cages. Following voir dire, the court below qualified Drs. William Benninger, Keith Hughes and Ronald Hughes to testify as experts regarding whether any harm came to the children as a result of appellants' use of the cages.

Upon the execution of the search warrant, Lieutenant Sommers and Detective Bracken took photographs of the interior of appellants' home and the cages. A number of these photographs were admitted into evidence at the hearing below and the officers testified that they accurately depicted the condition of the home when the photos were taken. The photographs reveal enclosures that can best be described as disturbing. The six enclosures were constructed of wooden two-by-fours, some painted, some left bare, and other pieces of what appear to be scrap wood, with plywood floors. Only one enclosure contained a mattress. Each enclosure included a door, some solid, some framed wire. Although the doors did not have locks on them, they did all have alarms. One of the alarms was played in the hearing below and the lower court found in its judgment that it emitted an " *extremely*

loud signal" if the door was opened after the alarm had been set. Four of the enclosures were constructed partially of wire to prevent the children from getting out. As stated above, the wire surrounding Serah's enclosure had been broken and pulled into the sleeping compartment, leaving exposed wires. Lieutenant Sommers testified that the exposed wires protruding into the enclosure were quite sharp. To "fix" this problem, appellants had nailed a piece of scrap wood on the outside of the enclosure but left the wires protruding into the sleeping compartment.

The room occupied by River and Jordan, the door to which was barricaded by a dresser to prevent the boys from escaping, did not include enclosed beds but did house homemade bunk beds constructed of wooden two-by-fours. At the time that the children were removed from the home, River and Jordan were three years old. The top bunk, however, was only guarded by a low two-by-four rail which, Detective Bracken testified, was not sufficient to keep a small child from falling out of bed. The room also included a hole in one of the walls. The hole was several feet above the floor and was slightly bigger than Lieutenant Sommers' fist. Detective Bracken testified that he looked inside the hole and saw electric wires running along a stud approximately one foot from the hole and within easy reach of a small hand.

Michael, appellants' 13 year old son, testified at the adjudication hearing about life in the G. family. Michael was adopted by Mr. and Mrs. G. when he was five years old. Michael testified that the caged beds were used for sleeping and as punishment, although Mr. and Mrs. G. told the children that the cages were for safety. Mr. and Mrs. G. installed the

cages approximately two years before the children were removed from the G. home. Michael admitted that he did occasionally physically hurt his siblings, once got a lighter and set a piece of paper on fire and was often angry and violent. While his own bed contained two blankets and two sheets, he slept on plywood and had no pillow. None of the other three cages in his room included a mattress. Once the children were in the enclosures for bed, the alarms would be set. If anyone opened the door and set off the alarm they had to have a good reason for getting up, such as to use the bathroom, or they would get in trouble. The alarms would wake up the household. Michael stated that at times he would need to use the bathroom but did not want to set off the alarm. On those occasions he would often urinate in his cage. When he, or any of the children, urinated in their beds, they were forced to stand outside in their wet pajamas with no coat or shoes regardless of the weather, until everyone else in the family was done using the bathroom.

Regarding use of the cages as punishment, Michael stated that Samson would be sent to his cage at least three times a week. When one of the children was sent to their cage as punishment, the alarm would be set. Michael stated that one time he had to stay in his cage for two weeks as punishment for taking a jar of peanut butter, cereal, a loaf of bread and a butter knife from the kitchen. On another occasion, Michael was sent to his cage and ordered to write out by hand the entire Book of Deuteronomy. He was not allowed to leave his cage, except for meals and bathroom breaks, until he finished. It took him several weeks. Michael further testified that on another occasion, he was forced to sleep in the bathtub for 81 days in an effort to cure his bedwetting problem. Other

punishments imposed by Mr. and Mrs. G. included pushing Joni's head in the toilet and giving her a "swirly" as punishment for drinking out of the toilet. It is worth noting here that Joni has Down's Syndrome. Similarly, Serah was punished in this manner for urinating in her bed.

At the adjudication hearing below, the court, over objections from appellants' counsel, qualified Drs. William Benninger, Keith Hughes and Ronald Hughes to testify as experts on the issue of whether the caged beds were abusive. Dr. Benninger and Dr. Keith Hughes performed psychological evaluations of the children as noted above. Both psychologists testified that RAD is extremely rare when properly diagnosed and that while the children did have some developmental, neurological and learning disorders, none of them had RAD.

Dr. Benninger further testified that isolation and the use of cages and alarms would have made the conditions that the children did have worse, including increasing disruptive behavior, anxiety and emotional difficulty. In Dr. Benninger's opinion, the cages likely caused psychological harm to the children. Similarly, Michael's being forced to sleep in the bathtub for an extended period of time was, in Dr. Benninger's opinion, harmful to him. In addition to the harm caused by the cages and punishments imposed by Mr. and Mrs. G., Dr. Benninger opined that because the children were home schooled and attended church services at home, they were further isolated from society.

Similarly, Dr. Keith Hughes testified that none of the children he evaluated had psychological disturbances or

behavior characteristics which would require restraints. Indeed, with regard to Joni, Dr. Hughes testified that children with developmental delays particularly require specific stimulation and that there was a great potential for harm when such children are isolated and restrained. In particular, he stated that such isolation and restraint could lead to self-stimulatory behaviors such as PICA (ingestion of nonfood articles), and picking at themselves and at walls. Dr. Hughes opined that the children he evaluated were specifically harmed by the cages because they impaired their development.

Dr. Ronald Hughes, a psychologist and LISW, was hired by appellee to do a risk assessment and determine the degree of abuse in the present situation. He too concluded that none of the G. children were appropriate candidates for such restrictive enclosures. Although he too believed that the children were misdiagnosed with RAD, he testified that if the children did have RAD, the use of the cages was particularly harmful because RAD children need a warm, sensitive, patient adult to contradict their expectation that adults are disinterested, abusive or unpredictable in their attachment relationships with them. He further noted that restrictive enclosures were only warranted in extreme cases and should only be used in psychiatric facilities where the patient could be continually monitored by mental health professionals. Dr. Hughes opined that the cages used in the present case were a threat to the children's physical safety and to their psychological development. More importantly, Dr. Hughes opined that the cages represented a serious lack of understanding of the children's developmental needs and a lack of capacity to formulate and implement appropriate

parenting strategies for the children by appellants. In Dr. Hughes' opinion, the G. family was out of control and Mr. and Mrs. G. used the cages to provide structure.

In their defense, appellants called Elaine Thompson, the children's therapist since 2001, to testify regarding the children's behaviors. Although Thompson admitted to recoiling upon first seeing the enclosures, she did not believe that they constituted abuse or neglect or created a dependency, and believed that they were for the children's safety. She also insisted throughout her testimony that a number of the children, included Michael, had RAD and that RAD children typically lie. In support of her diagnosis of RAD for Michael and Sharen, Thompson testified that both children were diagnosed with that disorder in 2001, at the Child Adolescent Psychiatric Unit of the Medical College of Ohio. No document was admitted into evidence, however, to substantiate this diagnosis.

On December 22, 2005, the lower court issued a judgment finding that, based on clear and convincing evidence, River, Jordan, Elijah, Serah, Simon, Joni, Samson and Michael were abused children as defined by R.C. 2151.031(B) because they were endangered as defined by R.C. 2919.22(A) and (B)(4) and that Michael was also an abused child as defined by R.C. 2151.031(D). The court further found by clear and convincing evidence that all of the G. children were dependent pursuant to R.C. 2151.04(C) in that their conditions and environment were such as to warrant the state, in the interests of the children, in assuming the children's guardianship, and that Mercy Anne, Abba and Sharen were dependent pursuant to R.C. 2151.04(D)(1) and

(2) because as household residents they were in peril of being exposed to the same disciplinary techniques and environment that led to certain of their siblings being endangered. The court did not find that River, Jordan, Elijah, Serah, Simon, Joni, Samson or Michael were neglected as proscribed by R.C. 2151.03(A)(2), and so dismissed the neglect allegations with regard to those children.

Initially, the case proceeded to the disposition hearing on January 18, 2006. At that time, however, appellee informed the court that it was then intending to seek permanent custody of the G. children and moved to continue the hearing. As a result, the court issued a judgment on January 20, 2006, which in relevant part continued the hearing, ordered appellants to submit to sex offender risk assessments and follow through with any and all recommended treatment and/or counseling, ordered appellants to sign the appropriate releases for background checks, ordered appellants to cooperate with appellee regarding submission of the children's vaccination records, social security cards and person effects, and ordered appellants to submit to psychological assessments and follow through with any and all recommended treatment and/or counseling.

On February 22, 2006, the disposition hearing began. Throughout the hearing, one issue of controversy was the admission of records (collectively referred to at the hearing below and herein as the "Lorain County documents") that appellee obtained from Lorain County Children Services ("LCCS") which documented Mr. and Mrs. G's. history with children services in that county regarding their own biological

children. The Lorain County documents were referred to by many witnesses at the hearing and had been reviewed by witnesses in making recommendations regarding whether the children could or should be returned to Mr. and Mrs. G. and regarding the best interests of the children. Appellants' counsel objected to their admission and all parties filed briefs on the issue. In a separately written decision and judgment entry, the lower court found that the documents were admissible. Accordingly, references to the documents by the various witnesses were considered by the trial court in reaching a determination on the ultimate issues. The Lorain County documents reveal the following.

On September 12, 1986, Mr. G. called the LCCS to self-refer that he had sexually abused his daughter Jenna G., then age 12, for the past two years. The abuse included fondling above the waist, over the clothing. That same day, Mr. G. and Jenna both came to LCCS and gave taped statements substantiating the abuse. The LCCS referred Mr. G. and Jenna to group and individual therapy. Jenna was removed from the home and went to live with an aunt and uncle. Prosecution of Mr. G., however, was not pursued because two sons, Jesse and Timothy, remained in the home and Jenna's mother had recently died. On March 17, 1987, Mr. G. signed a "therapy contract" in which he agreed to participate in the STOP/ Parents United Treatment Program and signed an acknowledgment that reads in part: "I am participating in STOP to control my inappropriate sexual behavior toward children and I wish to be held fully accountable for my behavior. I agree to stop all molesting behavior ." Shortly thereafter, Mr. G. met Mrs. G. at a STOP function (Mrs. G.'s daughter Lisa had been molested by Mrs. G.'s former

husband) and the two married in May 1987. Jenna moved back in with the new blended family in June 1987 and in July 1987, Mr. G. stopped attending the STOP treatment program. Mr. and Mrs. G. subsequently adopted each other's children. The family then included Mr. G.'s children, Jesse (age 14), Jenna (age 13) and Timothy (age 11), and Mrs. G.'s children, Lisa (age 17) and Joe (age 14). The family did not flourish. On May 31, 1991, the juvenile court gave custody of Timothy, then aged 14, to LCCS for placement after appellants refused to allow him to return home. In June 1991, Jenna ran away from home to the Junction Runaway Shelter because of severe conflicts between herself and both Mr. and Mrs. G. An LCCS social summary dated July 23, 1991, states: "Parents have refused requests by Junction Runaway Shelter to meet and discuss conflicts. Parents are often hard to get a hold of and rarely return calls." The summary further states: "This family has had a history of forcing their children out of the home so they do not have to deal with their unruly or delinquent behavior."

Jenna G. and Jesse G. testified at the hearing below about life with Mr. and Mrs. G. Jenna confirmed that she had been sexually abused by her father and that the molestation began when she was eight or nine years old. After living with her aunt and uncle for about one year, she returned to live with appellants after they married. Although life in appellants' home was okay at first, Jenna testified that it soon began to unravel. Eventually, all of the children were kicked out of the house by appellants. Lisa was the first to be evicted when she was a senior in high school. Joe was kicked out shortly after Jenna moved back home. Timothy had a number of emotional issues and was deeply affected by his mother's

death. When appellants could no longer handle Timothy's behavioral problems, they directed Jesse to walk Timothy down the street to the Junction Runaway Shelter. Timothy never moved back into the G.'s home and emancipated from a group home. Shortly after Timothy left, appellants threw Jesse's belongings onto the front yard and he too was evicted. Finally, when she was 16 years old, Jenna too ran away and eventually emancipated from a group home. Jenna testified that she had not seen Mrs. G. for eight years and had not seen Mr. G. for four years. When she did see Mr. G, however, he told her he had put himself into counseling because he was beginning to have thoughts of sexually abusing Abba.

The lower court also heard from the various social workers and caseworkers who had worked with the G. family since the children were removed from the home. Not one caseworker or social worker described appellants as cooperative. Despite the previous court order, appellants had not yet signed releases for background checks, and had not yet submitted to sex offender risk assessments or psychological evaluations. They had not provided caseworkers with up-to-date vaccination records for Serah, Simon or Elijah, so those children had to be re-vaccinated before they could attend school. When social workers visited appellants at their home several weeks before the disposition hearing, they requested to see the children's bedrooms but the request was denied. Indeed, Mrs. G. told the caseworkers that they could see the rooms on the news. Although appellants did attend a number of visitations with the children, the caseworkers testified that appellants were often inappropriate with the children, discussing matters of the case with them after being directed not to, and showed favoritism toward Abba, to the exclusion of the other children.

The caseworkers also testified about the children's adjustment to their foster homes and life away from appellants. All of the children are forming strong, healthy bonds with their foster families and most are adjusting well to being in public school. Mercy Anne, who was born with severe medical problems, has exceeded the expectations of her doctors. Her caseworker testified that her growth and development have been overwhelming since her removal from appellants' home. The children had been attending sibling visitations with each other once a week and the caseworkers testified that those visits go well and that for the most part the children truly enjoy each other's company. With regard to the children's wishes, only Abba expressed a desire to return to appellants.

Although appellee initially sought temporary custody of the G. children, with a goal of reunification, the caseworkers agreed that after receiving and reviewing the Lorain County documents in December 2005, they concluded that permanent custody was the only solution to the case. All of the caseworkers testified that permanent custody was in the best interest of the G. children.

At the disposition hearing below, appellee again called Drs. Hughes, Benninger and Hughes to testify as expert witnesses. Dr. Ronald Hughes testified regarding the future risk of abuse to the G. children should they be returned to appellants. Drs. Keith Hughes and William Benninger testified about their evaluations of the children specifically and their opinions regarding the best interests of the children. Over the objection of appellants' counsel, the court qualified Dr. Ronald Hughes to testify as an expert on the issue of

whether the children could or should be placed with appellants within a reasonable time and qualified Drs. Keith Hughes and William Benninger to testify as experts on the best interests of the children.

Dr. Ronald Hughes testified that in his opinion the likelihood of abuse in the G. home was high if the children were returned to the home. He based his opinion in part on the prior service history of the parties in Lorain County, the inappropriate discipline used by the Gs. with no insight into their behaviors and no expressed inclination to change, and the history of sexual abuse in the family regarding their own biological children. He particularly noted that when he visited appellants at their home, they did not seem to recognize the potential emotional harm that the cages could cause the children and felt that they were being mistreated by the HCDJFS.

Drs. Benninger and Keith Hughes had conducted psychological evaluations of the children and observed visitations between appellants and the children. They too opined that the likelihood of a recurrence of abuse was high if the children were returned to appellants' home. Both doctors noted that appellants demonstrated a lengthy history, beginning with their own biological children, of an inability to make appropriate parenting decisions and punishing their children with isolation and overly punitive discipline. Both doctors concluded that permanent custody was in the best interest of the children.

Finally, Margaret Kern, the guardian ad litem, testified at the disposition hearing below. Kern spent a great deal of

time with the G. children since they were removed from appellants' home. Despite three requests, appellants refused to meet with her. She attended the visitations between appellants and the children as well as the sibling visits. In her opinion, appellants had not taken any steps to acknowledge the abuse and dependency issues. Kern testified that since being removed from the home, the children had made great progress in their socialization and communication skills and that the risks to the children if they were returned to appellants' home were too great. She therefore recommended that permanent custody of the children be granted to appellee.

In addition to the witnesses presented by appellee, appellants called a number of witnesses to testify on their behalf, including Mrs. G. None of the witnesses presented any compelling testimony that would support a decision to return custody of the children to appellants.

On March 20, 2006, the lower court issued a judgment entry terminating the parental rights of Mr. and Mrs. G. and awarding permanent custody of River, Jordan, Elijah, Serah, Simon, Abba, Joni, Samson, Michael and Sharen to appellee. Because appellants' attempted adoption of Mercy Anne had not been completed, the court ordered that temporary custody of her remain with appellee. Pursuant to R.C. 2151.353(A)(4) and 2151.414(E)(14) and (15), the court found by clear and convincing evidence that the children cannot and should not be placed with either parent within a reasonable time and that, pursuant to R.C. 2151.414(D), an award of permanent custody of the adopted G. children was in their best interest. The court also made specific findings with regard to Mercy

Anne that will be addressed infra. Appellants now challenge that judgment on appeal through the following assignments of error:

"Assignment of Error 1: The trial court erred by allowing the state's experts to testify in the adjudicatory hearing and in allowing inadmissible testimony.

"Assignment of Error No. 2: The trial court erred by finding the G [.] children were abused and dependent.

"Assignment of Error No. 3: The trial court erred by allowing the state's experts to testify in the dispositional hearing.

"Assignment of Error No. 4: The trial court erred by admitting evidence from the 'Lorain County' files and other social history information.

"Assignment of Error No. 5: The trial court erred by granting permanent custody of ten of the G[.] children to the county and by granting temporary custody of Mercy Anne to the county ."

Appellants' first and third assignments of error are related and will be addressed together. Appellants challenge the trial court's decision to permit Drs. Hughes, Benninger and Hughes to testify as expert witnesses at the adjudication and disposition hearings below.

In *In re Baby Girl Doe*, 149 Ohio App.3d 717, 2002-Ohio-4470, ¶ 73-74, we discussed the standards applicable

to reviewing a trial court's determination that a witness is qualified to testify as an expert:

"The determination of whether a witness is qualified to offer testimony as an expert is within the sound discretion of the trial court. This discretion is not unlimited, but is subject to the provisions of the Rules of Evidence. Specifically, the expert should possess specialized, technical, or scientific knowledge. Evid.R. 702; *Columbus v. Dawson* (1986), 28 Ohio App.3d 45, 46-47 * * *. Additionally, the proffered testimony should assist the trier of fact in understanding the evidence or in determining a factual issue and be relevant to the case. *State v. Williams* (1983), 4 Ohio St.3d 53, * * * syllabus. As to this latter requirement, the expert's testimony is relevant insofar as it is reliable. *Williams*, supra, at 57-59 * * *; *State v. Minor* (1988), 47 Ohio App.3d 22, 25* * *. In *State v.. Nemeth* (1998), 82 Ohio St.3d 202, 210 * * *, the Ohio Supreme Court noted that the Staff Note to Evid.R. 702 'reinforced the directive that questions of reliability are to be directed at principles and methods used by an expert in reaching his or her conclusions, rather than trying to determine whether the conclusions themselves are correct or credible.'

"Under Evid.R. 702, a witness may be qualified as an expert by reason of knowledge, skill, experience, training, or education. While Evid.R. 702 permits expert testimony, a threshold determination must first be made under Evid.R. 104(A) concerning the qualifications of an individual to testify as an expert witness. *Vinci v. Ceraolo* (1992), 79 Ohio App.3d 640, 645-646 * * *. The decision that a witness is or is not qualified to testify as an expert is a matter within the

sound discretion of the trial court, and a court's ruling thereon will not be reversed unless there is a clear showing of an abuse of this discretion. *Alexander v. Mt. Carmel Med. Ctr.* (1978), 56 Ohio St.2d, 155, 157 * * *; *State v. Awkal* (1996), 76 Ohio St.3d 324, 331-332 * * *; *State v. Clark* (1995), 101 Ohio App.3d 389, 411 * * *."

At the adjudication hearing below, the lower court determined that Drs. William Benninger, Keith Hughes and Ronald Hughes were qualified to testify as experts on the issue of whether the caged beds were abusive. All three men were imminently qualified psychologists with vast experience and training in child psychology. Indeed, appellants never challenged the witnesses qualifications as experts in the field of child psychology. Rather, they challenged the witnesses' ability to testify on the issue of whether the caged beds constituted abuse. Throughout the proceedings below, and through the testimony of the children's therapist Elaine Thompson, appellants attempted to establish that most of the children had severe behavioral and developmental problems that required putting them in cages for the safety of themselves and the other children. Accordingly, the psychological and behavioral problems of the children, and the proper as well as improper treatments for those disorders, were clearly issues that the lower court needed to consider. The testimony of these witnesses assisted the court in understanding how isolation and the use of cages and alarms likely affected the children and therefore assisted the court in determining whether the children were abused and/or dependent.

Appendix A

We therefore cannot say that the lower court abused its discretion in allowing Drs. Keith Hughes, William Benninger and Ronald Hughes to testify as expert witnesses at the adjudication hearing below and the first assignment of error is not well-taken.

Appellants further challenge the trial court's decision to allow the same witnesses to testify as experts at the disposition hearing below. At the disposition hearing, the ultimate issues for the court's determination were whether the children could be placed with appellants within a reasonable time or should be placed with appellants and whether permanent custody was in the best interest of the children. In concluding that the children could not be placed with appellants within a reasonable time and should not be placed with appellants, the court looked to the factors in R.C. 2151 .414(E). Because the court had previously determined that appellants had committed abuse as described in R.C. 2151.031, the court examined the factors set forth in R.C. 2151.414(E)(14) and (15). The court therefore needed to determine whether appellants were unwilling to prevent the children from suffering abuse and whether the likelihood of recurrence of abuse made the children's placement with appellants a threat to the children's safety. The testimony of the three expert witnesses assisted the court in reaching a decision as to whether abuse was likely to recur. Evid.R. 702 reads in relevant part:

"A witness may testify as an expert if all of the following apply:

"(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

"(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

"(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. * * *."

As is evident from its decision and judgment entry of March 20, 2006, the lower court looked to these experts to help it determine the likelihood of future abuse to the children should they be returned to appellants. The witnesses' testimony in this regard related to matters of psychological harm and was based on years of training, education and reliable scientific information. We cannot conclude that the court abused its discretion in allowing these witnesses to testify as experts in this regard and the third assignment of error is not well-taken.

In their second assignment of error, appellants challenge the trial court's findings that the children were abused and/or dependent. Findings of abuse and dependency must be supported by clear and convincing evidence. R.C. 2151.35(A). Clear and convincing evidence is that evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

R.C. 2151.031 defines an "abused child" in relevant part as a child who:

Appendix A

"(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abuse child; [or]

" * * *

"(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare."

The child endangerment statute, R.C. 2919.22, provides in pertinent part:

"(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.
* * *

"(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

" * * *

"(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development[.]"

Appendix A

The trial court found that Michael, Serah, Simon, Elijah, Samson, Joni, Jordan and River were abused because they were endangered as defined in R.C. 2919.22(A) and (B)(4) and that Michael was also abused as defined by R.C. 2151.031(D). Upon a thorough review of the evidence in this case as set forth above, we find that the trial court's findings of abuse were supported by clear and convincing evidence.

We similarly find that the trial court's findings of dependency were supported by clear and convincing evidence. As used in R.C. Chapter 2151, a "dependent child" includes any child:

"(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship; [or]

"(D) To whom both of the following apply:

"(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child;

"(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household." R.C. 2151.04

Appendix A

The trial court found that the conditions and environment of all of the children were such as to warrant the state, in the interests of the children, in assuming the children's guardianship. The court described this environment as follows: "This environment was created by a combination of many factors, such as: six of the children slept in and were punished in boxes rigged with *extremely* loud alarms; one box contained a hole in the mesh wiring that even after rudimentary repair left sharp wires protruding *into* the box; two other children (each aged three) were at times barricaded in their room in which electrical wires were exposed in a wall and in reach; humiliating discipline was administered; the upstairs in general and several boxes in particular contained an overwhelming odor of urine; several of the children had sparse bedding; the upstairs contained no working smoke detectors; and, the fact that the eleven children's adoptive parents were 'overwhelmed' by the challenge of maintaining order in the home."

Because the trial court's findings of abuse and dependency were supported by clear and convincing evidence, the second assignment of error is not well-taken.

In their fourth assignment of error, appellants contend that the trial court erred in admitting the Lorain County documents into evidence at the disposition hearing below. As discussed above, the Lorain County documents reveal the service history of Mr. and Mrs. G. and their own biological children when they lived in Lorain County. Throughout the disposition hearing, appellants' counsel objected to their admission as hearsay and objected to any reference to the documents by any testifying witnesses who had reviewed

the documents. Appellants also objected to their admission on the ground that their dissemination violated certain privacy laws. The lower court ruled that LCCS's dissemination of the records to its Huron County counterpart was not only authorized but required by the Ohio Administrative Code. Appellants do not challenge that ruling on appeal. The court further held that the five specific documents at issue were either not hearsay or were otherwise admissible pursuant to a recognized exception to the hearsay rule. This is the ruling that appellants now challenge on appeal.

A trial court has discretion to determine which evidence to admit or exclude at trial, and such decisions will not be reversed on appeal absent an abuse of discretion. *State ex rel. Van Dyke v. Pub. Emp. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, ¶ 43.

Hearsay is defined in Evid.R. 801(C) as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." A "statement" is "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion." Evid.R. 801(A).

We first note that state's exhibit No. 1 is a certification of records affidavit signed by Jeannie Weisbrod, the records custodian of LCCS, which certified that the attached records, state's exhibits Nos. 2 to 6, were true and authentic copies of LCCS records regarding the G. family. Weisbrod further attested that the records were prepared and maintained in the usual course of business at the office of LCCS. Moreover, Weisbrod testified below that the documents were complete

and accurate copies of the records maintained by LCCS regarding the G. family. State's exhibit No. 2 is the Ohio Central Registry of Child Protection Child Abuse/Neglect Report, dated September 12, 1986. State's exhibit No. 3 is a Notification of Child Abuse or Neglect form used by LCCS and dated September 25, 1986. State's exhibit No. 4 is the Therapy Contract signed by Mr. G. acknowledging his inappropriate sexual behavior toward children and agreeing to participate in the STOP program. It is dated March 17, 1987. State's exhibit No. 5 is a letter from Pat Manns-Birmingham, the STOP program coordinator to Mr. G., dated August 19, 1987, in which Manns-Birmingham expresses her concern that Mr. G. and Jenna had dropped out of the STOP program. R. Scott Kelly, who had been a social worker at LCCS during the relevant time in question, testified at the hearing below that such letters were typically maintained in the LCCS file as part of the report from the therapist working with the family. Finally, State's exhibit No. 6 is a social summary of the G. family's history with LCCS prepared by R. Scott Kelly, approved by Susan Deppisch, his supervisor, and dated July 23, 1991. Kelly testified that he prepared the document and that such documents were typically prepared and maintained in LCCS files to document a family's history with the agency.

Upon review, it is clear that state's exhibits Nos. 2, 3, 5 and 6 were clearly hearsay. We agree with the trial court, however, in finding that these exhibits were subject to the hearsay exception for business records. Evid.R. 803(6) excepts from the hearsay rule: "Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made

at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term 'business' as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit." The testimony and affidavit of Jeannie Weisbrod, the custodian of the records, established that these exhibits were kept in the regular course of business at LCCS and that it was the regular practice of that business to create these records. Moreover, appellants have not established, and did not establish below, that the source of information or the method or circumstances of preparing the records indicated a lack of trustworthiness. Indeed, Jenna G. and Jesse G. both testified at the disposition hearing regarding Mr. G.'s sexual abuse of Jenna and the family's history with LCCS. The court therefore did not abuse its discretion in admitting state's exhibits Nos. 2, 3, 5, and 6.

We further find that the court did not abuse its discretion in admitting state's exhibit No. 4, the therapy contract. That document was not hearsay but, rather, constituted an admission by a party-opponent. See Evid.R. 801(D)(2).

Accordingly, the lower court did not err in admitting into evidence the Lorain County documents and the fourth assignment of error is not well-taken.

Appendix A

In their fifth assignment of error, appellants assert that the lower court erred in granting appellee permanent custody of their ten adopted children and in awarding appellee temporary custody of Mercy Anne.

The disposition of a child determined to be dependent or abused is controlled by R.C. 2151.353 and the court may enter any order of disposition provided for in R.C. 2151.353(A). Before the court can grant permanent custody of a child to a public children services agency, however, the court must determine: (1) pursuant to R.C. 2151.414(E) that the child cannot be placed with one of his parents within a reasonable time or should not be placed with one of his parents; and (2) pursuant to R.C. 2151.414(D), that the permanent commitment is in the best interest of the child. R.C. 2151.353(A)(4). R.C. 2151.414(E) provides that, in determining whether a child cannot be placed with a parent within a reasonable time or should not be placed with a parent, the court shall consider all relevant evidence. If, however, the court determines by clear and convincing evidence that any one of the 16 factors listed in the statute exist, the court must find that the child cannot be placed with the parent within a reasonable time or should not be placed with the parent. Those factors include:

"(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

Appendix A

"(15) The parent has committed abuse as described in section 2151.031 [2151.03.1] of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood or recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety."

In determining the best interest of the child, R.C. 2151.414(D) directs that the court shall consider all relevant factors, including, but not limited to:

"(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster care-givers and out-of-home providers, and any other person who may significantly affect the child;

"(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

"(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

"(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

Appendix A

"(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

In reviewing the evidence before it, the lower court found clear and convincing evidence that appellants have demonstrated and continue to demonstrate an unwillingness to prevent the children from suffering physical, emotional, or sexual abuse, that appellants committed abuse as described in R.C. 2151.031, and that the seriousness, nature or likelihood or recurrence of the abuse made the children's placement with appellants a threat to the children's safety. Accordingly, the lower court found that the adopted children could not be placed with appellants within a reasonable time or should not be placed with appellants. Upon a thorough review of the record, we conclude that these findings were supported by clear and convincing evidence. The physical and emotional abuse suffered by many of the children has already been discussed above and need not be repeated here. What is worth noting, however, is that upon reviewing the lengthy transcript from the proceedings below, we are left with the clear impression from nearly all of the witnesses whose testimony was relevant to these issues, that Mr. and Mrs. G. still do not believe that they did anything wrong. The trial court found this to be a very important factor in concluding that abuse was likely to recur if the children were returned to appellants. Indeed, as is clear from the following passage from the court's decision and judgment entry, the court found appellants' lack of insight to be significant in concluding that the children cannot and should not be returned to appellants: "The G[s.] in response [to efforts of the agency at reunification] have unfortunately been uncooperative, if not hostile, to the Department of Job and

Family Services. This attitude can be attributed to the G [s.'] continuing unwillingness to accept or understand that the children were being harmed and detrimentally affected by the discipline and environment in the G[.] home prior to their removal in September 2005. This lack of insight and understanding, as described above, supports the decision that the children cannot and should not be returned to the G[.] home."

Similarly, there was clear and convincing evidence to support the trial court's conclusion that an award of permanent custody of the adopted children to appellee was in those children's best interest. The court considered the interaction and interrelationship of the children with each other, with appellants, and with their current foster families. The court also considered the children's wishes and noted that of those who were old enough to express a preference, only Abba demonstrated a consistent desire to return to the Gs.' home. The others were either ambivalent or strongly desired not to return to appellants' home. The court further considered the custodial history of the children and the need for the children to have a legally secure placement as soon as possible. The court then noted that such a secure placement could not be achieved by pursuing a reunification plan with appellants when there was a likelihood of a recurrence of abuse in the G. home. Finally, the court expressly declined to find any of the factors listed in R.C. 2151.414(E)(7) to (11).

As there was clear and convincing evidence to support the trial court's findings that the ten adopted children could not be placed with appellants within a reasonable time and

should not be placed with appellants and that an award of permanent custody was in the children's best interest, the trial court did not err in terminating appellant's parental rights.

With regard to Mercy Anne, although appellants had legal custody of her they never had parental rights to her so the standards set forth in R.C. 2151.414, and the clear and convincing evidence standard, do not apply. Rather, R.C. 2151.353(A)(2) provides if a child is adjudicated a dependent child, the court may commit the child to the temporary custody of a public children services agency. Matters within the court's discretion will not be reversed on appeal absent an abuse of that discretion.

In the proceedings below, the court determined that it was in Mercy Anne's best interest to be placed in the temporary custody of the HCDJFS. It reached this conclusion after expressly finding that Mercy Anne is a two-year-old child with special medical needs; that she was placed with appellants as a result of an incomplete and inaccurate home study completed by Adopt America Network; that the home study failed to disclose material information concerning appellants and their home; that pre-adoptive placement with appellants is no longer appropriate or in Mercy Anne's best interest; that Mercy Anne has lived with appellants since August 2004, and all of her medical providers are in Ohio; that since her removal from appellants' home, Mercy Anne has done extremely well in a foster-to-adopt home in Huron County; that appellants are not appropriate adoptive parents; and that Mercy Anne is receiving Medicaid as a result of her status as a ward of Huron County Children Services, which

is necessary for her treatment. Upon review, and in consideration of these facts as well as the facts regarding the adopted G. children, we cannot find that the lower court abused its discretion in awarding temporary custody of Mercy Anne to appellee.

The fifth assignment of error is not well-taken.

On consideration whereof, the court finds that substantial justice has been done the parties complaining and the judgment of the Huron County Court of Common Pleas, Juvenile Division, is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Huron County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

Thomas J. Osowik, J.

CONCUR.

APPENDIX B — JUDGMENT OF THE HURON COUNTY COMMON PLEAS COURT, JUVENILE DIVISION, NORWALK, OHIO FILED MARCH 20, 2006

HURON COUNTY COMMON PLEAS COURT
JUVENILE DIVISION
NORWALK, OHIO

Case Number: DNA 2005 00056
DNA 2005 00057
DNA 2005 00058
DNA 2005 00059
DNA 2005 00060
DNA 2005 00061
DNA 2005 00062
DNA 2005 00063
DNA 2005 00064
DNA 2005 00065
DNA 2005 00066

In the matter of

Mercy Anne Gravelle
River Jordan Gravelle
Jordan River Gravelle
Elijah Gravelle
Serah Gravelle
Simon Gravelle
Abba Gravelle
Joni Gravelle
Samson Gravelle
Michael Gravelle
Sharen Gravelle

Appendix B

Alleged Abused/Dependent Children

cc: Pros/PD/Ray/Eisenman/Myers/Parents/Lamb/Kern-(gal)/DJFS

JUDGMENT

These cases came before the Court on 22, 23, 24, 25, 27 February and 1 March 2006 for continuation of the dispositional hearing and trial on the Huron County Department of Job and Family Services' request for permanent custody. Present before the Court were Ms. Jennifer DeLand, Assistant Prosecutor; Mr. Douglas Clifford on behalf of said children; said children's parents with counsel, Mr. Kenneth Myers; the guardian ad litem, Margaret Kern, with counsel, Mr. Jeremiah Ray; and the representative from the Cradle, Ms. Susan Vernon, with counsel, Ms. Susan Eisenman.

This Court has previously determined that **Michael Gravelle, Serah Gravelle, Simon Gravelle, Elijah Gravelle, Samson Gravelle, Joni Gravelle, Jordan Gravelle** and **River Gravelle** are abused children as defined by R.C. 2151.031(B) because they were endangered as defined in R.C. 2919.22(A) and R.C. 2919.22(B)(4), and that **Michael** is also an abused child as defined by R.C. 2151.031(D). The Court also determined that **all** of the Gravelle children are dependent children because the children's conditions and environment were such as to warrant the state, in the interests of the children, in assuming the children's guardianship. R.C. 2151.04(C). In addition, **Mercy Anne Gravelle, Abba Gravelle** and **Sharen Gravelle**

were determined to be dependent children under R.C. 2151.04(D)(I,2), because as household residents they were in peril of being exposed to the same disciplinary techniques and environment that led to certain of their siblings being endangered. The Huron County Department of Job and Family Services (HCDJFS) is now seeking permanent custody of **all** of the Gravelle children.

Generally, parents have a paramount right to custody of their minor children. *In re Murray* (1990) 52 Ohio St. 3d 155, 157. This right, however, is not absolute. *In re Baby Girl Doe* (2002) 149 Ohio App. 3d 717, 738. For example, once a child is adjudicated an abused, neglected or dependent child, the Court has several dispositional options, such as: granting legal custody to parents or others; granting temporary custody to parents subject to protective supervision by a public children services agency; granting temporary custody to a public children services agency; implementing a planned permanent living arrangement; and, granting permanent custody to a public children services agency. R.C. 2151.353. To commit a child to the permanent custody of a public children services agency at the initial dispositional hearing, the Court must first determine that

- ☐ the **child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent; and**

- ☐ that the permanent commitment is in the **best interest** of the child.

R.C. 2151.353(A)(4).

Appendix B

To conclude that a **child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents,** the court must first determine, by clear and convincing evidence, that **one or more** of the following **exist** as to each of the child's parents.

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the **parent has failed continuously and repeatedly to substantially remedy the conditions** causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) **Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent** that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 [2151.35.3] of the Revised Code;

Appendix B

(3) The **parent committed any abuse as described in section 2151.031** [2151.03.1] of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code **between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;**

(4) The parent has demonstrated a **lack of commitment** toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(5) The **parent is incarcerated** for an offense committed against the child or a sibling of the child;

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 **(Endangering Children)** or under section 2903.16 **(Failing to provide for a functionally impaired person)**, 2903.21 **(Aggravated menacing)**, 2903.34 **(Patient abuse/neglect)**, 2905.01 **(Kidnapping)**, 2905.02 **(Abduction)**, 2905.03 **(Unlawful restraint)**, 2905.04/D **(repealed)**, 2905.05 **(Criminal child enticement)**, 2907.07 **(Importuning)**, 2907.08 **(Voyeurism)**, 2907.09 **(Public indecency)**, 2907.12/D/D **(repealed)**, 2907.21 **(Compelling prostitution)**, 2907.22 **(Promoting prostitution)**, 2907.23 **(Procuring)**, 2907.25 **(Prostitution, after**

HIV test), 2907.31 **(Disseminating matter harmful to juveniles)**, 2907.32 **(Pandering obscenity)**, 2907.321 [2907.32.1] **(Pandering obscenity involving a minor)**, 2907.322 [2907.32.2] **(Pandering sexually oriented matter involving a minor)**, 2907.323 [2907.32.3] **(Illegal use of minor in nudity-oriented material or performance)**, 2911.01 **(Aggravated robbery)**, 2911.02 **(Robbery)**, 2911.11 **(Aggravated burglary)**, 2911.12 **(Burglary)**, 2919.12 **(Unlawful abortion)**, 2919.24 **(Contributing to unruliness or delinquency of a child)**, 2919.25 **(Domestic violence)**, 2923.12 **(Carrying concealed weapon)**, 2923.13 **(Having weapons while under disability)**, 2923.161 [2923.16.1] **(Improperly discharging firearm)**, 2925.02 **(Corrupting another with drugs)**, or 3716.11 **(Placing harmful objects in food or confection)** of the Revised Code and the child or a sibling of the child was a victim of the offense or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 **(Involuntary manslaughter)** of the Revised code, a **sibling of the child was the victim of the offense,** and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01 **(Aggravated murder)**, 2903.02 **(Murder)**, or 2903.03 **(Voluntary manslaughter)** of the Revised Code or under an existing or former law of this state, any other state, or

the United States that is substantially equivalent to an offense described in those sections **and the victim of the offense was a sibling** of the child **or the victim was another child who lived in the parent's household** at the time of the offense;

(b) An offense under section 2903.11 **(Felonious assault)**, 2903.12 **(Aggravated assault)**, or 2903.13 **(Assault)** of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections **and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household** at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 **(Endangering children)** of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the **child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim** of the offense;

(d) An offense under section 2907.02 **(Rape)**, 2907.03 **(Sexual battery)**, 2907.04 **(Unlawful sexual conduct with minor)**, 2907.05 **(Gross sexual imposition)**, or 2907.06 **(Sexual imposition)** of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the **victim**

of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

(8) The parent has **repeatedly withheld medical treatment or food** from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has **placed the child at substantial risk of harm two or more times due to alcohol or drug abuse** and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 [2151.41.2] of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has **abandoned the child.**

(11) The parent has had **parental rights involuntarily terminated** pursuant to this section or section 2151.353 [2151.35.3] or 2151.415 [2151.41.5] of the Revised Code **with respect to a sibling** of the child.

Appendix B

(12) The **parent is incarcerated at the time of the filing of the motion** for permanent custody **or the dispositional hearing** of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

(13) The **parent is repeatedly incarcerated,** and the repeated incarceration prevents the parent from providing care for the child.

(14) The parent for any reason is **unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.**

(15) The **parent has committed abuse as described in section 2151.031** [2151.03.1] of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, **and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.**

(16) Any other factor the court considers relevant.

R.C. 2151.414(E).

Appendix B

The Court finds that the factors identified in R.C. 2151.414(E)(14) and (15) are relevant to the cases involving the Gravelle children. The Court heard uncontroverted expert testimony that the seriousness, nature and likelihood of recurrence of the abuse suffered by eight of the Gravelle children made placement of the children with the Gravelles a threat to the children's safety. Dr. Ronald Hughes testified that the likelihood of recurrence of abuse was "extremely high" and "intense" and the threat to the children if returned to the Gravelle home would be "extreme." Dr. Ronald Hughes indicated that certain factors were especially pertinent in his analysis, including: the recent abuse of eight of the Gravelle children; prior abuse referrals for the parents in Lorain County; a prior service history in Lorain County; the number of children in the home at the time of removal; excessive and inappropriate discipline by the parents; over controlling parents; the lack of motivation by the parents to recognize their parenting deficiencies and strive to improve; and, the parents' lack of insight into the abuse suffered by the children. Dr. William Benninger testified that the harm suffered by the Gravelle children in the Gravelle home was "serious" and that there was a "high" likelihood of recurrence of maltreatment. Dr. Benninger also found disturbing the fact that the Gravelles were unwilling to acknowledge their wrongdoing in the instant set of cases and, in fact, defended their abusive behavior. *See: In re Hogan* (18 April 2002) 2002-Ohio-1770, 02-LW-1309, Allen App. No. 1-01-141, unreported (refusal to understand or acknowledge seriousness and extent of abuse can lead to a conclusion that abuse is likely to recur). Dr. Keith Hughes also testified that the likelihood of future abuse in the Gravelle home was "very strong."

Appendix B

The expert testimony was buttressed by the testimony of two of Mr. Gravelle's biological children, Jenna and Jesse. Jenna described the sexual abuse she suffered as an adolescent from her father and further testified about admissions made by her father about the abuse. Jenna also chillingly related the admissions Mr. Gravelle made to her approximately four years ago about sexual thoughts he was having involving Abba Gravelle. Jesse also testified that Mr. Gravelle admitted he had inappropriately touched Jenna during a conversation between Mr. Gravelle, Jesse and Jesse's brother.

The expert testimony and testimony of Jenna and Jesse was further supported by State's Exhibits 2-6. Exhibit 4 in particular is Mr. Gravelle's "Offender Acknowledgement" that he began participating in a treatment program to "control my inappropriate sexual behavior toward children and I wish to be held fully accountable for my behavior. I agree to stop all molesting behaviors." There is no indication anywhere in the record that Mr. Gravelle ever completed treatment at this program or in any other program.

The expert testimony, testimony of Jenna and Jess, and the documentary evidence from Lorain County was further supported by the testimony of the Department of Job and Family Services social workers who worked with the family since September, 2005. In particular, as recently as 30 January 2006, the Department was prevented from seeing the current condition of the upstairs of the Gravelle home that contained the boxes in which certain of the children were disciplined. Mrs. Gravelle declined the social workers' request to see the boxes, angrily advising the workers they could "see them on the news."

Appendix B

Even Mrs. Gravelle's testimony supports the opinions expressed by the expert witnesses. Mrs. Gravelle acknowledged that her actions do not speak as loud as her words in this case. It was obvious that Mrs. Gravelle still does not see the harm the children suffered in her household. Mrs. Gravelle admitted telling national television media that some of the children still need to be contained in the boxes, even after the children were removed from her home in September. Mrs. Gravelle instead has a belief that these cases were filed because "Children's Services has a personal vendetta" against her. Mrs. Gravelle also admitted to many inaccuracies in a home study affidavit she signed. *See:* State's Exhibit 9. Either Mrs. Gravelle purposefully lied on a statement under oath or she was extremely nonchalant about the accuracy of the information she was providing for a home study that would permit her to adopt children. Either of these scenarios is troubling to the court and certainly reflects adversely on Mrs. Gravelle's credibility.

Based on the uncontroverted expert testimony, the testimony of Mr. Gravelle's biological children, certain documents from Lorain County's Children Services, the testimony of the Department of Job and Family Services social workers, and the testimony of Mrs. Gravelle herself, the court finds clearly and convincingly that: 1) the Gravelles have demonstrated and continue to demonstrate an unwillingness to prevent the children from suffering physical, emotional, or sexual abuse; and 2) the Gravelles have committed abuse as described in section 2151.031 of the Revised Code and the seriousness, nature, or likelihood of recurrence of the abuse makes the children's placement with the children's parents a threat to the children's safety. R.C. 2151.414(E)(14, 15).

Appendix B

Next, the Court must determine if a permanent commitment is in the **best interest** of the children. Pursuant to R.C. 2151.414(D), the court must consider all relevant factors in making this determination, including but not limited to the following:

(1) The **interaction and interrelationship of the child with the child's parents, siblings,** relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(2) The **wishes of the child,** as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(3) The **custodial history of the child,** including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

(4) The **child's need for a legally secure permanent placement** and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(5) Whether any of the factors in divisions **(E)(7) to (11)** of this section apply in relation to the parents and child.

Appendix B

Application of these factors to the Gravelle children compels the court to conclude that there is clear and convincing evidence that, with the exception of Mercy Ann Gravelle, it is in the children's best interests to be placed in the permanent custody of the Huron County Department of Job and Family Services. Although it would never be appropriate for Mercy Ann to be returned to the Gravelle household, it would be in her best interests to remain in the temporary custody of the Huron County Department of Job and Family Services, given her unique status as never having been formally and completely adopted by the Gravelles. In this way, the Department of Job and Family Services, along with the Cradle, can assist the adoption court in Cook County, Illinois in determining whether or not Mercy Ann's current foster parents are appropriate adoptive parents for her.

The expert testimony of Dr. William Benninger and Dr. Keith Hughes, the testimony from social workers Lisa Ringlein, Jennifer Hess, Holly Keller and Jo Johnson, and the testimony of the guardian ad litem all lead the Court to these ultimate best interests conclusions. The Court has considered the interaction and interrelationship of the children with each other and with the Gravelles, as evidenced by the testimony describing their supervised visitations since September 2005. The Court also considers the children's interaction and interrelationships with their current foster families to be important. *See: In re Halstead* (27 January 2005) 2005 Ohio 403; 2005 Ohio LEXIS 902; Columbiana App. No. 04 CO 37, unreported ("courts should not casually disregard the relationship a very young child has established with a foster family . . ."). The court heard testimony from social workers and foster parents about how the children have

been integrated into the households of their current foster parents, notwithstanding the relocations a few of the children have experienced since their removal in September.

The Court has also considered the wishes of the children as expressed through the guardian ad litem. Only one of the eleven children has demonstrated an unequivocal and consistent desire to return to the Gravelle home. The others are either ambivalent, strongly desire to not return to the Gravelle home, or too young to express their wishes and concerns (Mercy Ann).

The Court has also considered the custodial history of the children. All of the children have already been removed from biological parents who were unfit, neglectful or abusive. All of the children were removed in September 2005 from a harmful, detrimental and abusive environment. Some of the children have had to relocate from one foster home to another since September 2005. Clearly, all of the children need a legally secure placement as soon as possible. This cannot be achieved, however, by pursuing a reunification plan with the Gravelles when the court has found that there is a likelihood of recurrence of abuse in the Gravelle home.

Finally, the Court finds that none of the factors in R.C. 2151.414(E)(7-11) apply at this time.

The Gravelles have argued that the Department of Job and Family Services has failed to make reasonable efforts to reunify the family. A juvenile court, however, is not required to order a reunification plan when it makes a disposition order pursuant to R.C. 2151.353(A)(4). *In re Baby Girl Baxter*

(1985) 17 Ohio St. 3d 229, Syl. 2. The Sixth District Court of Appeals has also repeatedly indicated that "it is well-established that where a children services agency seeks original permanent custody of a child pursuant to R.C. 2151.353(A)(4), the agency is not required to establish a case plan." *In re Baby Girl Doe* (2002) 149 Ohio App. 3d 717, 736, citing *In the Matter of Demetrius H.* (9 March 2001) 2001 Ohio App. LEXIS 1012, Lucas App. No. L-00-1300, unreported; *In the Matter of Misty B* (17 September 1999) 1999 Ohio App. LEXIS 4314, Lucas App. No. L-98-1431, unreported; *In the Matter of Stephanie H.* (17 September 1999) 1999 Ohio App. LEXIS 4306, Huron App. No. H-99-009, unreported; *In the Matter of Shawn W.* (30 September 1996) 1996 Ohio App. LEXIS 4226, Lucas App. No. L-95-267, unreported, and more recently *In re Aaron F.* (30 December 2004) 2004-Ohio-7152, Lucas App. No. L-04-1156, unreported.

The Court finds clearly and convincingly, however, that the Department *has* made reasonable efforts to prevent the continued removal of the children. From the beginning of this case, the Department of Job and Family Services was gathering vital information such as medical records, vaccination records and school records, considering alternative placements with other Gravelle family members (particularly Lisa Gravelle and the children's grandmother), setting up and making a priority supervised visitation for the children with the Gravelles and the children with each other, and making referrals for psychological evaluations. The Gravelles in response have unfortunately been uncooperative, if not hostile, to the Department of Job and Family Services. This attitude can be attributed to the

Appendix B

Gravelles' continuing unwillingness to accept or understand that the children were being harmed and detrimentally affected by the discipline and environment in the Gravelle home prior to their removal in September 2005. This lack of insight and understanding, as described above, supports the decision that the children cannot and should not be returned to the Gravelle home.

The Cradle has requested that the Court make additional specific findings as to Mercy Ann's case. The Court finds this request to be well founded given the testimony of the witnesses in general, and Cradle representative Susan Verrion in particular. Accordingly, as to Mercy Ann, the Court finds that:

1. Mercy Anne Gravelle AKA Mary Ann B. is a two-year-old child.

2. Mercy Anne has medical special needs.

3. Mercy Anne was placed in the Gravelle home as a result of an incomplete and inaccurate home study completed by Adopt America Network, a licensed Ohio adoption agency.

4. The home study failed to disclose material information concerning the Gravelles and their home.

5. The pre-adoptive placement with the Gravelles is no longer appropriate or in Mercy Anne's best interest.

6. Mercy Anne has lived in Ohio since 4 August 2004. Her medical care providers are located in Ohio.

7. Mercy Anne since her removal from the Gravelle home has done extremely well in a foster to adopt home in Huron County.

8. The Gravelles are not appropriate adoptive parents for Mercy Anne due to the reasons set forth above.

9. The Gravelles' adoption of Mercy Anne has not been finalized.

10. Mercy Anne Gravelle is receiving federal medical benefits (Medicaid) as a result of her status as a ward of Huron County Children Services, which are necessary for her treatment.

The Court also concludes, regarding Mercy Anne, as follows:

1. Mercy Anne Gravelle is a dependent child as defined by R.C. 2151.04(D).

2. It is in the best interest of Mercy Anne Gravelle that she be placed in the temporary custody of the Huron County Department of Job and Family Services and that an adoption plan be developed for her.

3. The involvement of the Cradle is necessary to the implementation of an adoption plan. Pursuant to applicable law, the Cradle is authorized on behalf of the biological parents to consent to any proposed adoption.

The Court makes all of its findings regarding Mercy Anne, and regarding all of the Gravelle children, by clear and convincing evidence.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that River Jordan Gravelle, Jordan River Gravelle, Elijah Gravelle, Serah Gravelle, Simon Gravelle, Abba Gravelle, Joni Gravelle, Samson Gravelle, Michael Gravelle and Sharen Gravelle be, and hereby are placed in the permanent custody of the Director of the Huron County Department of Job and Family Services.

It is further ordered that Mercy Anne Gravelle remain in the temporary custody of the Director of the Huron County Department of Job and Family Services.

It is further ordered that an adoption plan be implemented for all eleven children.

The Court having reviewed the **case plan** dated January 11, 2006 and received January 11, 2006; it is hereby ordered that the aforementioned be **approved**, and that all parties comply with the same.

Appendix B

It is further ordered that these matters be, and hereby are, continued to a date to be set by the Court.

It is therefore ordered that this judgment is a final judgment and an appealable order pursuant to Civil Rule 54 (B).

s/ Timothy L. Cardwell
Timothy L. Cardwell, Judge

APPENDIX C — JUDGMENT OF THE HURON COUNTY COMMON PLEAS COURT, JUVENILE DIVISION, NORWALK, OHIO DATED DECEMBER 10, 2005

HURON COUNTY COMMON PLEAS COURT
JUVENILE DIVISION
NORWALK, OHIO

In the matter of	Case Number: DNA 2005 00056
	DNA 2005 00057
Mercy Anne Gravelle	DNA 2005 00058
River Jordan Gravelle	DNA 2005 00059
Jordan River Gravelle	DNA 2005 00060
Elijah Gravelle	DNA 2005 00061
Serah Gravelle	DNA 2005 00062
Simon Gravelle	DNA 2005 00063
Abba Gravelle	DNA 2005 00064
Joni Gravelle	DNA 2005 00065
Samson Gravelle	DNA 2005 00066
Michael Gravelle	
Sharen Gravelle	Date: December 10, 2005

Alleged Abused/Dependent Children

cc: Pros /PD/Ray/ Eisenman/Myers /Parents /Lamb/ Kern-(gal)/DJFS

JUDGMENT

These cases came on for adjudicatory hearing and a hearing before the Court on the motion in limine/motion to strike on 6-10 December, 2005. Present before the Court on these dates were Ms. Jennifer DeLand, Ms. Davia Kasper

and Mr. Richard Woodruff, Assistant Prosecutors; Mr. Douglas Clifford and Mr. George Ford on behalf of said children; said children's parents with counsel, Mr. Kenneth Myers; the guardian ad li :m, Ms. Margaret Kern with counsel, Mr. Jeremiah Ray; and Ms. Susan Eisenman with a representative from the Cradle.

Thereupon, the Court found the motion in limine and the motion to strike not to be well taken, it is hereby ordered, adjudged and decreed that the motion in limine and the motion to strike be, and hereby are, denied.

The complaints as amended allege that **Mercy Anne Gravelle, Abba Gravelle** and **Sharen Gravelle** are dependent children as defined in R.C. 2151.04(C & D), and that **River Jordan Gravelle, Jordan River Gravelle, Elijah Gravelle, Serah Gravelle, Simon Gravelle, Joni Gravelle, Samson Gravelle** and **Michael Gravelle** are abused children as defined in R.C. 2151.031(B & D), neglected children as defined in R.C. 2151.03(A)(2), and dependent children as defined in R.C. 2151.04(C).

I. ABUSE

The abuse allegations are that **River, Jordan, Elijah, Serah, Simon, Joni, Samson** and **Michael**

- are ***endangered as defined in section 2919.22*** of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child; and that

- because of the acts of their parents, guardian, or custodian, suffer physical or mental injury that harms or threatens to harm the children's health or welfare.

R.C. 2151.031(B & D).

R.C. 2919.22 provides that

> (A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall ***create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support***; and
>
> (B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:
>
> (1) Abuse the child;
>
> (2) Torture or cruelly abuse the child;
>
> (3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is

excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) ***Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development***;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is

(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 [2925.04.1] of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section

Appendix C

2925.04 or 2925.041 [2925.04.1] of the Revised Code that is the basis of the violation of this division.

Testimony presented to the Court revealed that wooden and wire boxes were erected in the Gravelle home and were used by **Michael, Serah, Simon, Elijah, Samson** and **Joni** for sleep and for places to be punished in isolation from the rest of the household. Household "offenses" for which the boxes were used as punishment included roaming at night, hurting other members of the household, "stealing" food and bedwetting. The boxes were rigged with an alarm capable of emitting an *extremely* loud signal if the occupant of the box left it. The Department of Job and Family Services presented compelling testimony from three credible and objective expert witnesses who all concluded that the use of the devices was not only not warranted but was harmful to the welfare and development of the children who occupied them. Even the children's therapist acknowledged that she "recoiled" upon first observing these devices.

In addition, the box occupied by **Serah** contained a hole in the wire mesh resulting in sharp wires protruding into the box. Although there was a rudimentary repair to the hole, the hole was patched with wood from the outside, leaving the protruding wire exposed inside the box. There was clearly a substantial risk for cuts or puncture wounds to be caused to the seven-year-old occupant of this box.

Other examples of abusive discipline to **Michael** include being forced to sleep in a bathroom for an extended period of weeks because of bedwetting, and being confined for an

extended period until he wrote the entire book of Deuteronomy longhand for another transgression. Dr. William Benninger, Ph.D. testified that such embarrassing and humiliating techniques were detrimental to Michael and gave specific examples of other less severe remedies that Michael's parents could have used to treat bedwetting in particular.

Jordan and **River**, each three years of age, did not sleep in the boxes the above six children endured. These two children, however, were on occasion barricaded in their room by a dresser. Inside the room was a hole in which electrical wiring was exposed and in reach of the three-year-old occupants of the room. This condition created a substantial risk to the safety of these children and should have been corrected by their parents. To the extent it was not, the parents violated a duty of care and protection they owed to **Jordan** and **River**.

Ohio law recognizes that "parents have a right of restraint over their children, and the duty to correct and punish them for their misbehavior; however, such punishment must be reasonable, and must not exceed the bounds of moderation so as to inflict cruel punishment." *In re Mercer* (21 April 2005) 2005-Ohio-1845, 05-LW-1643, Franklin App. No. 04AP-422, citing *In re Schuerman* (1991) 74 Ohio App.3d 528, 531. The Court finds that the Gravelles exceeded these "bounds of moderation."

Based on the evidence and testimony at trial, the Court therefore finds clearly and convincingly that **Michael, Serah, Simon, Elijah, Samson, Joni, Jordan** and **River** are abused

children as defined by R.C. 2151.031(B) because they were endangered as defined in R.C. 2919.22(A) and R.C. 2919.22(B)(4), and that **Michael** is also an abused child as defined by R.C. 2151.031(D).

II. NEGLECT

The neglect allegations are that **River, Jordan, Elijah, Serah, Simon, Joni, Samson** and **Michael**

- lack adequate parental care because of the faults or habits of the children's parents, guardian, or custodian.

R.C. 2151.03(A)(2).

"Adequate parental care" is defined as

- the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs.

R.C. 2151.011(B)(1).

Although there were serious and disturbing issues inside the home at the time of the children's removal, the Court cannot find clear and convincing evidence that any of the Gravelle children lacked adequate food, clothing, shelter or specialized services. As a result, the neglect allegations regarding **River, Jordan, Elijah, Serah, Simon, Joni, Samson** and **Michael** shall be and hereby are dismissed.

Appendix C

III. DEPENDENCY

Mercy Anne Gravelle, Abba Gravelle and **Sharen Gravelle** are alleged to be dependent children because

- the children are residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the children or any other child who resides in the household is an abused, neglected, or dependent child; and

- because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the children, the children are in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

R.C. 2151.04(D)(1,2)

All of the children are alleged to be dependent children because

- their condition or environment is such as to warrant the state, in the interests of the children, in assuming the children's guardianship

R.C. 2151.04(C).

Appendix C

The Court heard expert testimony about the harmful, detrimental "*milieu*" that existed in the Gravelle household at the time of removal. This environment was created by a combination of many factors, such as: six of the children slept in and were punished in boxes rigged with *extremely* loud alarms; one box contained a hole in the mesh wiring that even after rudimentary repair left sharp wires protruding *into* the box; two other children (each aged three) were at times barricaded in their room in which electrical wires were exposed in a wall and in reach; humiliating discipline was administered; the upstairs in general and several boxes in particular contained an overwhelming odor of urine; several of the children had sparse bedding; the upstairs contained no working smoke detectors; and, the fact that the eleven children's adoptive parents were "overwhelmed" by the challenge of maintaining order in the home.

A determination of dependency based on R.C. 2151.04(C) "must be based on the condition or environment of the child, not the fault of the parents." *In re Ohm* (1 July 2005) 2005-Ohio-3500, 05-LW-2974, Hocking App. No. 05CA1. Even so, "a court may consider a parent's conduct insofar as it forms part of the child's environment." *Id.*, citing *In re Burrell* (1979) 58 Ohio St.2d 37, 39. Parental conduct "is significant if it is demonstrated to have an adverse impact on the child sufficient to warrant state intervention. *Id.* Even if "the child's environment has the *potential for causing an adverse impact*, a finding of dependency is appropriate. *In re Hauenstein* (7 June 2004) 2004-Ohio-2915, 04-LW-2421, Hancock App. Nos. 5-03-38 and 5-03-39.

Appendix C

After applying the law to the facts presented at the adjudicatory hearing, the Court clearly, convincingly and without question finds that **all** of the children's conditions and environment were such as to warrant the state, in the interests of the children, in assuming the children's guardianship. R.C. 2151.04(C). In addition, **Mercy Anne Gravelle, Abba Gravelle** and **Sharen Gravelle** are dependent children under R.C. 2151.04(D)(1,2), because as household residents they were in peril of being exposed to the same disciplinary techniques and environment that led to certain of their siblings being endangered. This the Court finds by clear and convincing evidence as well.

After hearing many hours of testimony the Court has a good understanding of the problems and difficulties that existed in the Gravelle home at the time of removal. The Court has no reason to question the motives of the Gravelles for adopting eleven children. Our county, state and nation all desperately need loving, caring adoptive homes for children who have been removed from abusive and neglectful environments. The Gravelles were eager to adopt, and several primarily urban counties were eager to find permanent homes for children they had removed from abusive, harmful homes. The current state of the law encourages if not requires a rush to adoption after children have been placed in the permanent custody of a child protective services agency and the rights of abusive or neglectful parents have been terminated. This sense of urgency most often is in the best interests of children. In situations like this, however, there is a real need for independent, objective and informed analysis about whether or not a proposed adoption is in the best interests of a particular child. At least in the case of the Gravelles' last

adoption, that kind of analysis, although vitally important, was found wanting and simply was not done by the adoption agency that negligently performed the required home study.

Over time many factors contributed to the Gravelles becoming overwhelmed by the daunting challenge of raising the growing number of at-risk, special needs and/or developmentally delayed children in their household. In this overwhelmed state, the Gravelles made a series of poor parental decisions that were detrimental to the children and led to an appropriate intervention by the Huron County Department of Job at Family Services and the Huron County Sheriff.

Much effort has been made to identify the problems in the Gravelle home. The time has now come to spend even more effort to find solutions that are in the best interests of these eleven children.

Therefore the Court finds by clear and convincing evidence that River Jordan Gravelle, Jordan River Gravelle, Elijah Gravelle, Serah Gravelle, Simon Gravelle, Joni Gravelle, Samson Gravelle and Michael Gravelle are abused children as alleged in the complaints and it is therefore ordered that an adjudication of abuse be entered in DNA 2005 57, DNA 2005 58, DNA 2005 59, DNA 2005 60, DNA 2005 61, DNA 2005 63, DNA 2005 64 and DNA 2005 65.

Therefore the Court finds by clear and convincing evidence that Mercy Anne Gravelle, River Jordan Gravelle, Jordan River Gravelle, Elijah Gravelle, Serah

Appendix C

Gravelle, Simon Gravelle, Abba Gravelle, Joni Gravelle, Samson Gravelle, Michael Gravelle and Sharon Gravelle are dependent children as alleged in the complaints and it is therefore ordered that an adjudication of dependency be entered in DNA 2005 56, DNA 2005 57, DNA 2005 58, DNA 2005 59, DNA 2005 60, DNA 2005 61, DNA 2005 62, DNA 2005 63, DNA 2005 64, DNA 2005 65 and DNA 2005 66.

It is further ordered that said children's custodian and his/her parents immediately notify the Court and the social worker of any change in address or change in their current living situation. Failure to notify the Court of any change may result in a finding of contempt of Court.

s/ Timothy L. Cardwell
Timothy L. Cardwell, Judge

APPENDIX D — ORDER OF THE SUPREME COURT OF OHIO DENYING APPEAL FOR REVIEW DECIDED JUNE 20, 2007

SUPREME COURT OF OHIO

2007-0790

In re MERCY ANNE G.

June 20, 2007, Decided

OPINION

APPEAL NOT ACCEPTED FOR REVIEW

O'Donnell J. dissents.

(2)

No. 07-401

FILED

OCT 25 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAREN G., *et vir*,

Petitioners,

v.

HURON COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES and THE CRADLE SOCIETY,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Ohio, Huron County

BRIEF IN OPPOSITION ON BEHALF OF THE CRADLE SOCIETY, LEGAL GUARDIAN OF M.A.G. AKA M.A.B.

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Attorney of Record

Submitted October 25, 2007

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OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

When a pre-adoptive placement is made based on an inaccurate and incomplete homestudy and the placement is found to be adverse to the child's best interests due to abusive and chaotic conditions in the home, may the child properly be found to be dependent and placed in an appropriate, alternative home in a prompt manner?

LIST OF PARTIES

The Petitioners are Sharen and Michael Gravelle, the pre-adoptive parents. Respondents are the Huron County Department of Job and Family Services, which holds temporary custody of Mercy Anne, and The Cradle, which is the legal guardian of Mercy Anne under Illinois law.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINION BELOW	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR NOT GRANTING THE PETITION	11
I. THE FINDING OF DEPENDENCY AS TO MERCY ANNE WAS WELL SUPPORTED BY THE RECORD	11
II. BECAUSE OF MERCY ANNE'S STATUS AS A PRE-ADOPTIVE CHILD, THE GRAVELLES DID NOT HAVE PARENTAL RIGHTS NOR DID A PERMANENT COURT COMMITMENT OCCUR IN REGARD TO MERCY ANNE. THUS THE APPELLANT'S ASSIGNMENT OF ERROR AS TO THE APPLICATION OF THE PERMANENT COMMITMENT LAW IS INAPPLICABLE TO MERCY ANNE	18
III. MERCY ANNE'S RIGHT TO HAVE HER BEST INTEREST CONSIDERED AND TO ESTABLISH A PERMANENT HOME ARE CONSTITUTIONALLY PROTECTED	19

TABLE OF CONTENTS – Continued

Page

CONCLUSION 24

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page

CASES:

C.E. Morris Co. v. Foley Construction Co., 54 Ohio St. 2d 279 (1978) 18

Cross v. Ledford, 161 Ohio St. 469, 53 Ohio Op. 361, 120 N.E.2d 118 (1954) 16

Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981) 20

Hawk v. Hawk, 855 S.W.2d 573 (Tenn. 1993) 22

In the Matter of Dalton Dale Crow, 2002 Ohio 3282, 2002 Ohio App. LEXIS 3431 (2002) 16

In the Matter of Rachelle Surfer, Franklin App. No. 97APF09-1158 (1997) 17

In re Adoption of Holcomb, 18 Ohio St. 3d 361, 18 Ohio B. 419, 481 N.E.2d 613 (1985) 16

In re Appeal in Pima County Juvenile Severance Action No. 2-114487, 876 P.2d 1121 (Ariz. 1994) 22

In re Baby Boy C., 581 A.2d 1141 (D.C.App. 1990) 22

In re C. M., 2006 Ohio 1908, 2006 Ohio App. LEXIS 1752 (2006) 16

In re Gault, 387 U.S. 1 (1967) 20

In re Guardianship of J.R., 416 A.2d 62 (N.J. Super. 1980) 23

In re Hauenstein, 2004-Ohio-2915, 04-LW-2421, Hancock App. Nos. 5-03-38 and 5-03-39 (7 June 2004) 13

TABLE OF AUTHORITIES – Continued

Page

In re Misty Angles, 1992 Ohio App. LEXIS 4863 (1992) 16

In re Ohm, 2005-Ohio-3500, 05-LW-2974, Hocking App. No. 05CA1 (1 July 2005) 13

In re Pieper Children, 85 Ohio App.3d 318, 619 N.E.2d 1059 (1993) 17

In re Robert O., 604 N.E.2d 99 (N.Y. 1992) 23

Lehr v. Robertson, 463 U.S. 248 (1983) 21

Meyer v. Nebraska, 262 U.S. 390 (1923) 24

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 24

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976) 19

Reist v. Bay Circuit Judge, 241 N.W.2d 55 (Mich. 1976) 20

Roberts v. United States Jaycees, 468 U.S. 609 (1984) 21

Santosky v. Kramer, 455 U.S. 745 (1982) 20, 24

Santosky v. Kramer, 102 S. Ct. 1388 (1982) 18

Smith v. City of Fontana, 818 F.2d 1411 (9th Cir. 1987) 20

Smith v. Organization of Foster Families, 431 U.S. 816 (1977) 20, 24

Sorentino v. Family & Children's Society of Elizabeth, 367 A.2d 1168 (N.J. 1976) 23

Sorentino v. Family & Children's Society of Elizabeth, 378 A.2d 18 (N.J. 1977) 23

TABLE OF AUTHORITIES – Continued

Page

State v. Otten, 33 Ohio App.3d 339, 515 N.E.2d 1009 (1986) 17

Sykes Constr. Co. v. Martell, 9th Dist. Nos. 15034 and 15038, 1992 Ohio App. LEXIS 93 (1992) 17

State ex rel R.E., 645 So.2d 205 (La. 1994) 23

Tingley v. Williams City Department of Human Services, 100 Ohio App.3d 385 (1995) 18

Wisconsin v. Yoder, 406 U.S. 205 (1972) 24

STATUTES:

42 U.S.C. § 1305 ..... 3, 19

O.R.C. 2151.04 12

O.R.C. 2151.04(C) 4, 13

O.R.C. 2151.04(D)(1, 2) 12, 13, 14

O.R.C. 2151.031(B) 4

O.R.C. 2151.031(D) 4

O.R.C. 2151.35 16

O.R.C. 2151.353 18

O.R.C. 2151.413 18

O.R.C. 2151.414 4

O.R.C. 2151.419 4

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS:

First Amendment 3

Fourteenth Amendment 3

BRIEF IN OPPOSITION ON BEHALF OF THE CRADLE, LEGAL GUARDIAN OF MERCY ANNE GRAVELLE AKA MARY ANNE B.

The Cradle, legal guardian of Mercy Anne Gravelle, aka Mary Anne B., respectfully submits this brief in opposition to the petition for writ of certiorari filed by the Gravelles.

THE OPINION BELOW

This case is a consolidated appeal of eleven cases involving eleven children. Ten of the children were the adoptive children of Michael and Sharen Gravelle. The eleventh child, Mercy Anne G. aka Mary Ann B., had a different status. She was in the home as a pre-adoptive placement.

Mercy Anne has resided in Ohio since August 4, 2004. The Cradle, a licensed Illinois adoption agency, is her legal guardian. T.2912. The Cradle is legally empowered by Illinois law to consent to the adoption of this child as a result of a voluntary relinquishment by both of her birthparents. She was placed with the Gravelles as a pre-adoptive child based upon a homestudy purportedly done by a licensed Ohio agency selected by the Gravelles. T.48, T.978-9., T.993, T.1222, T.2983. The homestudy was flawed and inaccurate.

The Gravelles had legal custody of this child pursuant to an entry of the Circuit Court of Cook County – Custody Division at the time of the trial in

this matter. T.2985. This award of custody was made in an adoption action filed by the Gravelles. T.2998. When the Ohio court became involved, the Illinois court stayed the proceeding there. The Cradle requested the permission of Illinois court to withdraw the Cradle's consent to the adoption. T.2986. Subsequent to Judge Cardwell's decision in the court below, the Illinois court granted leave to The Cradle to withdraw its consent for the Gravelles to adopt Mercy Anne and dismissed their adoption petition. Appendix A.

The Huron County Juvenile Court, on December 10, 2005, found eight children to be abused due to physical and psychological abuse. The court found the other children to be dependent because they lived in a home in which a child was abused. In addition, all of the children were found to be dependent because the conditions in the home were such that the state should assume custody in the best interest of the children. Finally, the court made specific finding as to Mercy Anne. These findings indicated that the pre-adoptive placement procedure had been flawed by a false and/or fraudulent homestudy.

The court then permanently committed the ten older children to the custody of Huron County Children Services terminating the Gravelles' parental rights. In the matter of Mercy Anne, the court merely placed the temporary custody of the child with Huron County Children Services while The Cradle maintained guardianship. The Gravelles did not have parental rights as to Mercy Anne.

The decision of the Huron County Court was upheld by the Sixth District Court of Appeals.

The Ohio Supreme Court declined *certiorari*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

First Amendment

Children's Right to Maintain Associational Rights

Mercy Anne has a constitutional right to maintain her relationship with her current foster-to-adopt parents – with whom she has resided twice as long as she resided with the Gravelles.

Fourteenth Amendment Due Process Clause

Right to a Prompt Hearing and Resolution

Mercy Anne has a right to a prompt resolution of her unfortunate pre-adoptive placement with the Gravelles. Consolidation of her case with the other children in the Gravelle home has worked a hardship on her. The Gravelles never had parental rights as to Mercy Anne. The delays involved in this matter have infringed on Mercy Anne's rights.

42 U.S.C. § 1305 Safe Families and Adoption Act

The federal adoption policy mandates that children who cannot be cared for by their biological

families should be promptly placed in alternative permanent placements.

O.R.C. 2151.04(C)

All of the children in the Gravelle home were found to be dependent because the conditions in the home were "such as to warrant the state, in the interest of the children in assuming the children's" custody. Clearly the conditions in the Gravelle's home warranted the state's assuming custody. Mrs. Gravelle herself testified that the conditions in the home were chaotic and unhealthy.

O.R.C. 2151.031(B) and (D)

This provision involving child abuse and "child endangering" is the linchpin on the appellant's argument in this appeal. The trial court's finding as to O.R.C. 2151.03(B) and (D) are not essential to the court's ultimate decision to place temporary custody of Mercy Anne with Huron County Children Services, or to permanently commit the other children.

O.R.C. 2151.414 and 2151.419

This section is not applicable to Mercy Anne's case. These provisions deal with permanent court commitment and termination of parental rights. The Gravelles never had parental rights as to Mercy Anne.

STATEMENT OF CASE

Mercy Anne Gravelle is a three-and-a-half-year-old child. T.46. Mercy Anne was born with medical special needs, including a cleft palate, a heart defect, and feeding issues. T.1224.

At both adjudicatory and dispositional phase, the court heard testimony that the home study submitted to the Illinois court, The Cradle, and the Ohio and Illinois Interstate Compact Offices was incomplete and contained false information. The court found that the homestudy was false and possibly fraudulent. T.3015. The home study contained no mention of the four older Gravelle children – Joe, Jenna, Jesse, and Tim. These were the biological children of the Gravelles. The home study also failed to mention the problems involving these older children, which resulted in the Gravelles being placed in the Lorain County Children Services system. T.2984, T.3016. The home study did not reference Michael Gravelle's admission of molesting his older (now adult) daughter, his failure to successfully complete sexual offender treatment, the failure of both of the Gravelles to participate in Tim's out-of-home treatment, inappropriate sexual contact between Joe and Lisa, and the fact that most of the older set of children left or were forced out of the Gravelle home by the Gravelles prior to their eighteenth birthdays. All of this information came out at the trial. T.3016.

The home study stated that the Gravelles had experienced no crises since the prior home study,

while Sharen Gravelle testified that the home was in an on-going state of crisis, which resulted in the use of cages. During her testimony, Mrs. Sharen Gravelle confirmed that the home study statement was inaccurate. T.3395-6, T.3254.

Further the home study referenced a supportive relationship between the Gravelles and the larger community, while the testimony at hearing reflected a family that had isolated itself from a community the Gravelles perceived as hostile. T.539, T.885, T.1046, T.3393, T.3394.

Judge Cardwell found that Mrs. Gravelle admitted to many inaccuracies in a home study affidavit she signed. *See*: State's Exhibit 9. "Either Mrs. Gravelle purposefully lied on a statement under oath or she was extremely nonchalant about the accuracy of the information she was providing for a home study that would permit her to adopt children. Either of these scenarios is troubling to the court and certainly reflects adversely on Mrs. Gravelle's credibility." Huron County Juvenile Court decision of March 20, 2006.

In the Gravelle home, Mercy Anne was one of eleven children who resided there. T.47. At the adjudication hearing the testimony of the witnesses established that the home contained alarmed beds, boxed cages/enclosures. T.507-510, T.515-T.525, T.212, T.798. These alarmed beds which contained limited bedding, were used for sleeping and as punishment for six of the eleven children. T.508-9, T.511-512,

T.513-516, T.517, T.530, T.548, T.527, T.30-31, T.45-46, T.679, T.931. They were made of unpainted or unfinished wood and chicken wire. T.506, 512, 514, 515, 518, 32-36. The cages/beds were not properly ventilated or lit. T.31. They smelled of urine. T.31. There were sharp, wire tips exposed on the inside of the beds/cages where the children pulled the wire away from the frame. T.31, T.222-3.

The expert witnesses for the state testified that this arrangement was inappropriate and abusive. Based upon the expert's examinations of the children, none of the children seemed to need such harsh measures. T.908, 919, T.772, T.795-99. They testified that such beds were virtually never an appropriate remedy for children. T.873, T.890, T.916.

Dr. Ronald Hughes testified that the cages were an extreme measure only warranted when:

> 1.) The child is totally unpredictable or an active danger;
>
> 2.) When less restrictive means have been tried and were unsuccessful;
>
> 3.) When closely monitored by an adult and prescribed by a mental health professional. T.873.

In fact, Dr. Hughes viewed the cages as "per se" abusive and neglectful. T.890. He stated that the cages violate the children's trust and made attachment issues more difficult. He felt that the cages may well have aggravated the children's condition rather

than helping them. T.883. Based upon the psychological assessment done by Dr. Hughes' associates, he felt that the cages were not appropriate for any of the Gravelle children. T.908, T.916.

Dr. Benninger did psychological assessment on five of the children; Michael, Simon, Samson, Elijah and Serah. He felt that none of these children presented a risk which necessitated a caged bed. T.636, T.681-2, T.685, T.697-699.

Dr. Keith Hughes did psychological assessments on five other Gravelle children, Jordan River, River Jordan, Abba, Sharen and Joni. He testified that none of these children were appropriate for alarmed beds. T.772, T.795-99. In particular they were inappropriate for Joni, a Down's Syndrome child, who was described as easy to manage. The alarmed bed was counter-indicated and isolating for Joni. The bed could lead to self-stimulatory behavior. He specifically stated that nothing in her profile merited a caged bed, although the Gravelles had her in such a bed. T.786.

Michael Gravelle, the son, also testified that Joni Girl was placed in a caged bed. T.517. Social worker Jo Johnson testified that she had seen Joni in a caged bed on her first visit to the home. T.38.

The Gravelle's expert witness was Elaine Thompson, LISW. Ms. Thompson testified that she was in the house on a weekly basis working with the children. T.1254, T.1327-8. She testified that she did not suggest or prescribe the caged beds for the children. T.1265. However she understood why the parents might have

used them. T.1196, T.1279, T.1331. She felt the main concern was safety, particularly with Michael. She based her understanding of the safety concerns largely on statements made to her by Sharen Gravelle, the mother. T.1268, T.1332-3. Elaine Thompson felt that Sharen was a reliable reporter. T.1260, T.1335-6, T.1344. On cross examination, Elaine Thompson admitted a number of the statements made by Sharen Gravelle, particularly to the worker who did the homestudy for Mercy Anne's adoption, were inaccurate. T.1347. Likewise, Elaine Thompson was at a loss to explain Ms. Gravelle's divorce affidavit, which stated that several children had told Ms. Thompson that Michael Gravelle, the father, was abusive toward them. T.1381. Ms. Thompson had not testified to any abuse by Michael Gravelle, the father, nor had she reported any abuse to the authorities.

Elaine Thompson testified that she believed that she had superior knowledge to the prosecution experts in that she knew the children better and had seen them over a period of time. T.1365-6. However, Elaine Thompson was unaware that Joni was sleeping in a caged bed. Ms. Thompson testified that had she been aware of the use of the caged bed for Joni, she would have advised the parents not to place Joni in such a bed. She deemed the caged bed as totally inappropriate for Joni. T.1341-2.

In addition to the issues of the caged/alarmed beds there was other testimony of harsh punishment/abuse within the Gravelle home. Michael, the son, testified:

1) That he was made to stand outside in cold weather in wet clothes when he wet the bed. T.535-36.

2) That he was confined to the bathroom for 81 days for wetting himself and to the caged bed for two weeks for taking food. T.530, T.537, T.552.

3) That he had to have permission to move from room to room in the house or to enter the kitchen and that he was punished for taking food. T.549-550.

4) That the parents had used the garden hose outside on Serah when she did not bathe regularly. T.538.

5) That the parents administered harsh physical punishments to the other children for relatively minor offenses, including placing their faces in the toilet (Serah and Joni), slamming Simon's head against the wall and spanking the children with a board when they left their beds without permission. T.541-2, T.556, 528.

The psychologist, Keith Hughes also testified that Sharen, the daughter, was confined to the bathroom for several weeks for failing to maintain appropriate hygiene during her menstrual period. T.935. The Gravelle expert witness also testified that Sharen was confined to the bathroom as punishment for improper menstrual hygiene. T.1338.

Since Mercy Anne's removal from the Gravelle home, she has resided in one foster-to-adopt home. She has flourished there. The foster parents wish to

adopt her. She has now resided in this foster home longer than she resided with the Gravelles.

REASONS FOR NOT GRANTING THE PETITION

This case has an unusual and extreme fact pattern. A decision in this case would do little to clarify child welfare litigation.

The neglect standard, of which the appellant complains, was not a necessary finding in order for the court to place Mercy Anne in the temporary custody of Huron County Children Services or for the court to terminate the Gravelle's parental rights to the other children. The deposition could have been made under the finding of dependency which merely required that the state's action was warranted by the children's best interests. The dependency finding which the court also made as to all eleven children was fully supported by Mrs. Gravelle's own testimony.

I. THE FINDING OF DEPENDENCY AS TO MERCY ANNE WAS WELL SUPPORTED BY THE RECORD.

Placing custody of Mercy Anne with Huron County Children Services did not involve the termination of any parental rights.

The Huron County Juvenile Court found that all of the children in the Gravelle home were dependent

because their condition or environment was such to warrant the state, in the interest of the children, to assume guardianship. O.R.C. 2151.04. Mercy Anne was also found to be dependent because she had resided in a home in which another child was abused or dependent and the facts surrounding the abuse or dependency make it likely that she was in danger of abuse or dependency from the same parent. O.R.C. 2151.04(D)(1,2).

> The Court heard expert testimony about the harmful, detrimental "*milieu*" that existed in the Gravelle household at the time of removal. This environment was created by a combination of many factors, such as: six of the children slept in and were punished in boxes rigged with *extremely* loud alarms; one box contained a hole in the mesh wiring that even after rudimentary repair left sharp wires protruding *into* the box; two other children (each aged three) were at times barricaded in their room in which electrical wires were exposed in a wall and in reach; humiliating discipline was administered; the upstairs in general and several boxes in particular contained an overwhelming odor of urine; several of the children had sparse bedding; the upstairs contained no working smoke detectors; and, the fact that the eleven children's adoptive parents were "overwhelmed" by the challenge of maintaining order in the home.

A determination of dependency based on R.C. 2151.04(C) 'must be based on the condition or environment of the child, not the fault of the parents.' *In re Ohm* (1 July 2005) 2005-Ohio-3500, 05-LW-2974, Hocking App. No. 05CA1. Even so, 'a court may consider a parent's conduct insofar as it forms part of the child's environment has the *potential for causing an adverse impact,* a finding of dependency is appropriate. *In re Hauenstein* (7 June 2004) 2004-Ohio-2915, 04-LW-2421, Hancock App. Nos. 5-03-38 and 5-03-39.

After applying the law to the facts presented at the adjudicatory hearing, the Court clearly, convincingly and without question finds that **all** of the children's conditions and environment were such as to warrant the state, in the interests of the children, in assuming the children's guardianship. R.C. 2151.04(C). In addition, **Mercy Anne Gravelle, Abba Gravelle** and **Sharen Gravelle** are dependent children under R.C. 2151.04(D) (1,2), because as household residents they were in peril of being exposed to the same disciplinary techniques and environment that led to certain of their siblings being endangered. . . .

Over time many factors contributed to the Gravelles becoming overwhelmed by the daunting challenge of raising the growing number of at risk, special needs and/or developmentally delayed children in their household. In this overwhelmed state, the Gravelles made a series of poor parental decisions that

> were detrimental to the children and led to an appropriate intervention by the Huron County Department of Job and Family Services and the Huron County Sheriff (Huron County Juvenile Court decision, March 20, 2006).

At the dispositional hearing, the court made the following additional findings as to Mercy Anne –

> – Mercy Anne was placed in the Gravelle home as a result of an incomplete and inaccurate home study completed by Adopt American Network, a licensed Ohio adoption agency.
>
> – The home study failed to disclose material information concerning the Gravelles and their home.
>
> – The pre-adoptive placement with the Gravelles is no longer appropriate or in Mercy Anne's best interest.
>
> – The Gravelles are not appropriate adoptive parents for Mercy Anne . . .
>
> – The Gravelles' adoption of Mercy Anne has not been finalized. . . .
>
> – Mercy Anne Gravelle is a dependent child as defined by R.C. 2151.04(D).
>
> – It is in the best interest of Mercy Anne Gravelle that she be placed in the temporary custody of the Huron County Department of Job and Family Services and that . . . another adoption plan be developed for her.

(Huron County Juvenile Court decision, March 20, 2006).

These findings were well supported by the record. The testimony of the homestudy agency, the placing agency, the therapist treating the family and Sharen Gravelle (the mother) all agreed that the homestudy was incomplete and inaccurate and failed to disclose material information. Sharen Gravelle, the mother, had been the primary source for the information in the homestudy. The Court found she was careless as to the truth or that she was intentionally deceptive. Decision of Huron City Juvenile Court, March 20, 2006.

Susan Vernon of The Cradle, Mercy Anne's Illinois guardian, testified that the placement would not have been made to begin with if all of the pertinent information had been included such as –

> – Michael Gravelle (the father) admitted history of sexual abuse for which he had never completed treatment.
>
> – The general chaos in the home.
>
> – The social isolation of the family.
>
> – The prior involvement with the county children's services board as to the older children.

T.2984, T.3016.

The Huron County expert Ronald Hughes also testified that the home was not a healthy environment for a young child. T.2986.

Pursuant to O.R.C. 2151.35, the court must find that the child is a dependent child by clear and convincing evidence. *In re Misty Angles*, 1992 Ohio App. LEXIS 4863 (1992). Clear and convincing evidence is such evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the conclusion to be drawn. *In re C. M.*, 2006 Ohio 1908, 2006 Ohio App. LEXIS 1752 (2006), citing to *In re Adoption of Holcomb*, 18 Ohio St. 3d 361, 18 Ohio B. 419, 481 N.E.2d 613 (1985).

Where the proof required must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof. * * * However, it is also firmly established that judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by the court. *In the Matter of Dalton Dale Crow*, 2002 Ohio 3282, 2002 Ohio App. LEXIS 3431 (2002), citing to *Cross v. Ledford*, 161 Ohio St. 469, 53 Ohio Op. 361, 120 N.E.2d 118 (1954).

In order to reverse the decision of the trial court, the appellate court must decide that the trier of fact lost its way and created such manifest miscarriage of justice that the only decision that can be made is to reverse to the trial court. *In re C. M.*, 2006 Ohio 1908, 2006 Ohio App. LEXIS 1752 (2006). To come to such a

conclusion, the appellate court must find that the judgment is against the manifest weight of the evidence, using the same standard of review that is used in a criminal case:

> 'an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and the new trial ordered.'

State v. Otten, 33 Ohio App.3d 339, 340, 515 N.E.2d 1009 (1986).

Further, a juvenile court's decision will be reversed only in a case where the trial court abused its discretion. *In re Pieper Children*, 85 Ohio App.3d 318, 330, 619 N.E.2d 1059 (1993); *In the Matter of Rachelle Surfer*, Franklin App. No. 97APF09-1158 (1997). Abuse of discretion is more than simple error. It implies that the court acted arbitrarily, capriciously, or unreasonably. Absent extreme circumstances, an appellate court will not second-guess determination of weight and credibility. *Sykes Constr. Co. v. Martell*, 9th Dist. Nos. 15034 and 15038, 1992 Ohio App. LEXIS 93, at *23-24 (1992).

Therefore the decision of the Huron County Juvenile Court should not be disturbed.

II. BECAUSE OF MERCY ANNE'S STATUS AS A PRE-ADOPTIVE CHILD, THE GRAVELLES DID NOT HAVE PARENTAL RIGHTS NOR DID A PERMANENT COURT COMMITMENT OCCUR IN REGARD TO MERCY ANNE. THUS THE APPELLANT'S ASSIGNMENT OF ERROR AS TO THE APPLICATION OF THE PERMANENT COMMITMENT LAW IS INAPPLICABLE TO MERCY ANNE.

Mercy Anne was a one-year-old child at the time she was removed from the Gravelle home. She was in the home on a pre-adoptive placement. Her adoption was not final.

Because the court's decision was supported by other credible evidence, it should be upheld. *C.E. Morris Co. v. Foley Construction Co.*, 54 Ohio St. 2d 279 (1978).

The Appellants in the Assignment of Error as the termination of parental rights, quotes at length statutory and case law concerning permanent commitment. These laws and cases are not applicable to Mercy Anne's temporary court commitment which is governed by O.R.C. 2151.353 as opposed to 2151.413. *Santosky v. Kramer,* 102 S. Ct. 1388 (1982); *see also Tingley v. Williams City Department of Human Services*, 100 Ohio App.3d 385 (1995).

Likewise Appellant's argument that no other appropriate adoption home is available is inapplicable to Mercy Anne. Mercy Anne's foster parents are eager to adopt her. By the time this appeal is decided,

Mercy Anne will have been in the new foster home twice as long as she was with the Gravelles. She has flourished in her new foster-to-adopt home.

III. MERCY ANNE'S RIGHT TO HAVE HER BEST INTEREST CONSIDERED AND TO ESTABLISH A PERMANENT HOME ARE CONSTITUTIONALLY PROTECTED.

The trial court determined that it was in Mercy Anne's best interest that an alternate adoption plan be made for her. Such a plan does in fact exist with Mercy Anne's current foster-to-adopt parents. Mercy Anne has resided in the current home for twice as long as her placement with the Gravelles. The Gravelle home was found to be inappropriate for Mercy Anne. The judge's ruling is consistent with the federal mandate that children who cannot be cared for by their natural families should be placed in alternate permanent placements as soon as possible. Safe Families and Adoption Act of 1997, 42 U.S.C. § 1305.

In reaching this decision the court recognized Mercy Anne as an individual possessed of her own interests and right to a suitable, stable and permanent family. This right is constitutionally founded in the promise of an inalienable right to life and liberty. These rights are both protected and substantive.

It has long been recognized that children are persons with rights protected by the United States Constitution. *Planned Parenthood of Central Missouri*

v. Danforth, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority."); *In re Gault*, 387 U.S. 1, 13 (1967) (stating that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"). The realm of personal family life is a fundamental interest protected by the Fourteenth Amendment to the United States Constitution. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (there is an "historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment"); *Smith v. Organization of Foster Families*, 431 U.S. 816, 845 (1977) (the protected familial relationship may arise from other than biological ties, *e.g.* foster care); *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987) (stating that a child's interest in continued companionship and society of . . . caregivers is a cognizable liberty interest). This fundamental right belonging to both caregivers and children also has been explicitly recognized by states other than California. *See, e.g., Reist v. Bay Circuit Judge*, 241 N.W.2d 55, 62 (Mich. 1976) (holding that the rights of parent and child in their "fundamental human relationship" are encompassed within the term "liberty"); *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981) (recognizing liberty interest in mutual relationship between child and parent).

The United States Supreme Court in *Smith v. Organization of Foster Families*, 431 U.S. 816, 844 (1977) stated that "biological relationships are not the

exclusive determination of the existence of a family." As the Court recognized,

> the importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in "promot[ing] a way of life" through the instruction of children, as well as from the fact of blood relationship.
>
> No one would seriously dispute that a deeply loving and interdependent relationship between an adult and a child in his or her care may exist even in the absence of blood relationship.

Id. (citation omitted). *See also Lehr v. Robertson*, 463 U.S. 248, 249, 261 (1983) (a "developed parent-child relationship merits constitutional protection); *Roberts v. United States Jaycees*, 468 U.S. 609, 619-20 (1984) ("family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life."). *Id.* at 664-65 (citations omitted).

These considerations should apply whenever courts consider efforts by noncustodial contestants to assert custodial or visitation rights with a child who is being adopted or is eligible for adoption. The child's interest in having his immediate familial relationship undisturbed must prevail in the face of unwarranted

intrusion by those who do not have an established relationship with the child. *See, e.g., Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993) (striking down Tennessee's former grandparent visitation statute as unconstitutional when applied to a stable family absent a showing of substantial harm to the child if visitation were terminated).

Finally, a child's liberty interest in family stability must be considered when a challenge results in protracted litigation. Children are the innocent victims of such litigation and the grief that it inflicts. They should not be awarded to the "winner" as if they were a prize. Children are blameless. Mercy Anne's current foster to adopt family is her psychological family. She has resided with them more than twice as long as she resided with the Gravelles. Depriving a child of her established, psychological family ties without consideration of the harm she will suffer infringes upon her procedural due process rights. Therefore, under some circumstances, the purported rights of prior caregivers may be limited because of a child's independent right to remain in the current custodial environment she has known. *See e.g., In re Appeal in Pima County Juvenile Severance Action No. 2-114487*, 876 P.2d 1121 (Ariz. 1994) (rights of a father who fails to grasp parental "opportunity quickly, diligently, and persistently" may be terminated if the court finds that it is in the child's best interest); *In re Baby Boy C.*, 581 A.2d 1141 (D.C.App. 1990) (a presumptively fit thwarted father's right to veto a proposed adoption may nonetheless be

overcome by clear and convincing evidence that it is in the best interest of the minor for the adoption to proceed); *In re Robert O.*, 604 N.E.2d 99 (N.Y. 1992) (promptness of biological father's actions to assert parental rights is measured in terms of the baby's life, not by the onset of the father's awareness); *State ex rel R.E.*, 645 So.2d 205 (La. 1994) (putative father has burden of persuading court that he preserved his opportunity interest by taking concrete steps to preserve his relationship to the child); *Sorentino v. Family & Children's Society of Elizabeth*, 367 A.2d 1168, 1170 (N.J. 1976) (because the child had been in the custody of the adoptive parents for over two and a half years, the adoptive parents were entitled to a hearing on "whether transferring custody of the child to plaintiffs . . . will raise the probability of serious harm to the child"); *Sorentino v. Family & Children's Society of Elizabeth*, 378 A.2d 18 (N.J. 1977) (Upon remand and appeal, custody with the adoptive parents was undisturbed); *In re Guardianship of J.R.*, 416 A.2d 62 (N.J. Super. 1980) (following *Sorentino*, and holding that the rights of a prior caregiver may be terminated without a showing of unfitness where "foster care has been permitted for so extended a period as to have resulted in the virtual creation of a new parent-child relationship, albeit not one based upon blood but upon love, affection and need, and a trial judge, with evidential justification, concludes that disruption of that new relationship, suddenly or gradually, would damage the child").

In the instant case, the Gravelles failed to provide a valid homestudy recommending their home. As a result of the flawed homestudy and the chaos in their home, Mercy Anne was removed. She then formed an alternative familial relationship with her current foster-to-adopt parents. It is inappropriate to disturb this new, healthy relationship.

In conclusion from, Mercy Anne's perspective, the relationship with her current foster to adopt family is not different from the most traditional parent-child relationships protected in the past from state interference by courts. *See e.g., Santosky v. Kramer*, 455 U.S. 745 (1982); *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); and *Meyer v. Nebraska*, 262 U.S. 390 (1923). This Court is urged to recognize that Mercy Anne has a constitutionally based liberty interest in the protection of her current established family, a right which is at least equal to, and even outweighs, the rights of others who would claim a "possessory" interest in this child.

CONCLUSION

For the reasons stated above, the Respondents request that the motion for certiorari be dismissed and that Mercy Anne at last be allowed to proceed with a new adoption plan for her life. It has long been the desire of her birthparents and her guardian, The

Cradle, that Mercy Anne have the benefits of a suitable permanent home.

Respectfully submitted,

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Submitted – October 25, 2007

Attorney No. 50124

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – COUNTY DIVISION

IN RE THE ADOPTION OF M.A.B., A Minor.	)))	NO. 04 COAD 1625

ORDER

THIS CAUSE coming before the Court upon the Agency Motion to Withdraw Consent and to Dismiss Cause, due notice having been given, the Cradle and the Gravelles appearing by counsel, the Guardian ad Litem appearing in person, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, for the reasons stated by the Honorable Susan Fox Gillis in open court, that[; The Huron County Ohio Court having jurisdiction]

(1) The Cradle is granted leave to withdraw its consent to the pending adoption by the Gravelles;

(2) This adoption case is dismissed with prejudice.

ENTER:

/s/ Susan Fox Gillis
JUDGE

Date: (Entered Mar. 28, 2008)

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(3)

No. 07-401

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAREN and MICHAEL GRAVELLE,

Petitioners,

v.

HURON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES and THE CRADLE SOCIETY,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Ohio, Sixth Appellate District, Huron County, Ohio

BRIEF FOR RESPONDENT HURON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioners have presented compelling reasons to grant the Writ for Certiorari on the issues of the abuse of the Gravelle children and the termination of the Petitioners' parental rights where the Petition fails to establish any of the threshold jurisdictional elements under Rule 10 of the United States Supreme Court Rules in that there have been no decisions issued in this matter by a United States court of appeals or the Ohio Supreme Court, nor has a state court issued a decision on an important question of federal law in the proceedings below.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	2
REASONS FOR DENYING THE PETITION	6
CONCLUSION	18

TABLE OF AUTHORITIES

Page

CASES:

In re Baby Girl Baxter (1985) 17 Ohio St. 3d 229, Syl.2 10

In re Baby Girl Doe (2002) 149 Ohio App. 3d 717 10

In the Matter of Demetrius H. (9 March 2001) 2001 App. LEXIS 1012, Lucas App. No. L-00-1300, unreported 10

In the Matter of Misty B (17 September 1999) 1999 Ohio App. LEXIS 4314, Lucas App. No. L-98-1431, unreported 11

In the Matter of Noftz (1986), 1986 WL 9098 8

STATUTES AND RULES:

Sup. Ct. R. 10 1

R.C. 2151.031 ..... 4, 7

R.C. 2151.031(B) 4, 7

R.C. 2151.04(C) 4

R.C. 2151.04(D) 4

R.C. 2151.353(A)(4) 10

R.C. 2151.414(B) 17

R.C. 2151.414(D) 17

R.C. 2151.419(A)(1) 14

R.C. 2919.22(A) 4, 7, 8

TABLE OF AUTHORITIES – Continued

Page

R.C. 2919.22(B)(1) 8

R.C. 2919.22(B)(4) 4, 7, 8, 9

BRIEF OF RESPONDENT IN OPPOSITION

INTRODUCTION

Petitioners had eleven children in their home. Based on the Petitioners' treatment of these eleven children all were adjudicated to be dependent and eight were adjudicated to be abused. Subsequently the Petitioners had their parental rights terminated when the Huron County Juvenile Court granted permanent custody of ten of the children and temporary custody of the eleventh to the Huron County Department of Job and Family Services.

Petitioners fail to present compelling reasons to grant the Writ for Certiorari on the issues of the abuse of the Gravelle children and the termination of the Petitioners' parental rights since the Petition fails to establish any of the threshold jurisdictional elements under Rule 10 of the United States Supreme Court Rules. Specifically, there have been no decisions issued in this matter by a United States court of appeals or the Ohio Supreme Court, nor has a state court issued a decision on an important question of federal law in the proceedings below.

This case does not merit review by this Court. This case was a case of factual determination. "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law". Sup. Ct. R. 10. The issues Petitioners present to this Court are the same issues presented to the Ohio Supreme Court. The Ohio Supreme Court denied

review and this Court should deny the Petition for a Writ of Certiorari.

STATEMENT OF THE CASE AND FACTS

The situation that gives rise to this appeal is the treatment of eleven children that were adopted or in the pre-adoptive state by the Petitioners. The Petitioners were the adoptive parents of ten children and were in the adoption process for the eleventh child. An investigator with the Huron County Department of Job and Family Services (hereinafter the Department), received information regarding the Petitioners' children being kept in cages. The investigator began an investigation that led to a visit to the Petitioners' house on September 9, 2005. In the upstairs of the home, the investigator observed two bedrooms that contained multiple wood and wire caged structures with doors. Each cage door was equipped with an alarm. The structures were very dark inside and, in the first room, none had any mat, mattress, or pillows. Only one cage had a mattress – that of the child with Down's syndrome. The structures had plywood nailed to the outside areas where the child inside had pulled at the wire in an effort to get out. While at the home, the investigator saw the Down's syndrome child, peering out at the investigator from within her cage.

A third room shared by two toddlers was barricaded with a wooden slat door topped by a standard

baby gate. This room had a dresser outside in the hall area that was pulled in front of the slat door to prevent the occupants of the room from getting out. The entire second floor of the house had the overwhelming stench of urine.

Based on the investigator's observations a search warrant was approved by the local judge and executed the same day by the Huron County Sheriff and deputies. Based on the conditions the Sheriff found, the Sheriff removed all eleven children and placed them in foster care after medical clearance from the local hospital.

On September 12, 2005 the Department filed complaints alleging all eleven children were dependent and neglected, as well as complaints eight of the children were abused. On this same day the Huron County Juvenile Court held a Shelter Care Hearing and placed the eleven children in the temporary custody of the Department.

The children were interviewed by the Sheriff's Office and the Department. The Petitioners had alleged the children had a wide variety of special needs. These alleged special needs were based on information provided by the Petitioners. Therefore, the Department promptly retained experts in child psychology to conduct assessments on the children's psychological and overall mental states. These evaluations of the children indicated the children did not have the extensive needs claimed by Petitioners.

The results of the interviews and assessments were presented to the Juvenile Court.

An adjudicatory hearing was held from December 6, 2005 to December 10, 2005. Respondents and the Petitioners presented evidence and testimony. The testimony encompassed not only the cages and the physical hazards of the home, but also the harsh and unwarranted disciplinary measures used by the Petitioners. The Petitioners used extreme and harsh punishments to deal with normal childhood behavior. These punishments included forcing a child to live in the bathroom for approximately three months, locking a child outside wearing only wet pajamas or using a hose to spray a child down in the yard, both in very cold weather, all for wetting the bed. Also, Petitioners would shove some of the children's heads into the toilet for misbehavior, including that of a child with Down's syndrome. Based on the evidence presented, the Huron County Juvenile Court issued a judgment on December 22, 2005 finding three of the children dependent under R.C. 2151.04(D), all eleven children were dependent, under R.C. 2151.04(C), and eight of the children were abused under R.C. 2151.031(B) "because they were endangered as defined in R.C. 2919.22(A) and R.C. 2919.22(B)(4), and that [one child] is also an abused child as defined by R.C. 2151.031(D)." *In re Mercy Anne Gravelle et al.*, Huron County Common Pleas Court Juvenile Division, DNA 2005 00056-00066 p. 4, 6.

On January 18, 2006 parties were present at the juvenile court for a dispositional hearing. Respondent

moved for permanent custody of the eleven children. Based on this request, the Respondent also requested a continuance of the hearing. The dispositional hearing was conducted starting on February 22, 2006. The Juvenile Court heard over twelve witnesses' testimony over a six day time period. Evidence and testimony was presented, including the testimony of two of Mr. Gravelle's biological adult children. The two biological children testified about the Petitioners' pattern of extreme punishment and abusive treatment of their biological children. The biological children testified that the parents met at a sex offender group in which Mr. Gravelle was there because he had admitted to sexual abuse of his daughter and Mrs. Gravelle was in attendance because her ex-husband had sexually abused her daughter. The Huron County Juvenile Court issued a judgment entry on March 20, 2006 granting permanent custody of the ten children and temporary custody of Mercy Anne to the Department.[1]

Petitioners appealed to the Sixth District Court of Appeals and the Appellate Court affirmed the decisions of the Huron County Juvenile Court, March 14, 2007. The Ohio Supreme Court denied review of the case, June 20, 2007. Appeal to this Court followed.

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[1] Petitioners were subsequently indicted and convicted by a jury on multiple counts of felony child endangering and misdemeanor child abuse. *State of Ohio v. Gravelle*, Huron County Common Pleas Court Case Nos. CRI 2006-0152 and 2006-0153. Appeals pending before the Sixth District Court of Appeals, Case No. H-2007-0010.

All of the children have a possibility of being adopted to a permanent home and some are in the pre-adoptive process. However, after over two years since the children's removal from the Petitioners, progress towards adoption and permanent placement for these children is halted with each appeal filed.

REASONS FOR DENYING THE PETITION

The petition should be denied because Petitioners do not present compelling reasons to grant the Writ for Certiorari on the issues of the abuse of the Gravelle children and the termination of the Petitioners parental rights since the Petition fails to establish any of the threshold jurisdictional elements under Rule 10 of the United States Supreme Court Rules. Specifically, there have been no decisions issued in this matter by a United States court of appeals or the Ohio Supreme Court, nor has a state court issued a decision on an important question of federal law in the proceedings below. The issues Petitioners present to this Court are the same issues presented to the Ohio Supreme Court which denied review.

I. REVIEW IS NOT WARRANTED BECAUSE THE DEFINITION OF CHILD ABUSE IN OHIO IS CLEARLY DEFINED.

Petitioners' first argument does not claim that this matter arises under the constitution or federal law. The state legislature's definition of child abuse is

not a federal question. The definition is not a sufficiently important question because the Ohio Supreme Court failed to take it in for review. Even if appropriate for this Court to review the definition of child abuse, the state's definition of child abuse is not unconstitutional.

In order to adjudicate a child to be an abused child, a juvenile court must find clear and convincing evidence to support at least one of five definitions of child abuse according to R.C. 2151.031. In the case at hand, the Juvenile Court found eight of the eleven children in the home to be abused. The three children in the home that were not caged were found to be dependent.

The eight abused children were adjudicated to be such under R.C. 2151.031(B) because the children were found to be endangered according to R.C. 2919.22(A) and (B)(4). An abused child includes one who "is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child". R.C. 2151.031(B).

Petitioners argue this Court should grant review because the definition of child abuse in Ohio is unconstitutionally vague. However, Petitioners did not raise this argument to the Huron County Juvenile Court nor the Sixth District Court of Appeals. Additionally, as in their request for review to the Ohio

Supreme Court, Petitioners base their entire vagueness argument on the definition of abuse under R.C. 2919.22(B)(1) which addresses serious physical harm. Petitioners claim to question the definition of abuse according to R.C. 2919.22(A) and B(4). However, the argument actually made and case law cited by Petitioners address the definition of abuse only according to R.C. 2919.22(B)(1). Petitioners quote extensively from *In the Matter of Noftz* (1986), 1986 WL 9098, however, the *Noftz* Court analysis was focused on child abuse arising from serious physical harm under 2919.22(B)(1).

It is important to note the Huron County Juvenile Court did not adjudicate any of the children under R.C. 2919.22(B)(1), nor did the Juvenile Court even address the definition of child endangering or child abuse under R.C. 2919.22(B)(1). Therefore the definition of child abuse under R.C. 2919.22(B)(1) is not applicable to this particular case. Since R.C. 2919.22(B)(1) was not the cited authority to determine these children were abused, this would not be an appropriate case to scrutinize the definition of abuse according to R.C. 2919.22(B)(1).

Petitioners argue serious physical harm or a substantial risk of serious harm to the physical health or safety of the child must be demonstrated prior to a finding of abuse. Abuse is not exclusively physical, but can also be mental. Petitioners neglect to address Petitioners' abuse to the mental health and development of the children. Instead, Petitioners cite various cases defining abuse under R.C. 2919.22(B)(1).

Once again, that subsection was not used in this case and therefore not relevant to this matter.

Specifically, R.C. 2919.22(B)(4) states child endangering includes when a person "repeatedly administer(s) unwarranted disciplinary measures to the child, when there is substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development". Dr. Keith Hughes and Dr. William Benninger conducted psychological assessments of the children. Both doctors along with Dr. Ronald Hughes testified as to the unwarranted and excessive disciplinary measures the children suffered at the hands of Petitioners. The three doctors testified some of the children's mental health or development was impaired already and all of the children were at substantial risk for their mental health or development to be seriously impaired or retarded. The children's mental health or development was at substantial risk to be impaired or retarded either because they were caged and excessively disciplined by Petitioners or they were subjected to witnessing Petitioners caging and excessive discipline of their siblings.

Therefore, Petitioners' first argument fails to claim a matter that arises under the constitution or federal law or proposes an important federal question to warrant review by this Court.

II. REVIEW IS NOT WARRANTED BECAUSE THERE WAS NOT A VIOLATION OF THE PETITIONERS' CONSTITUTIONAL OR STATE RIGHTS

Petitioners' final argument posits to arise under the Fourteenth Amendment, however, they fail to make any claims under the Fourteenth Amendment and further, Petitioners were afforded all due process as individuals and parents. This matter does not present a sufficiently important question because the Ohio Supreme Court failed to take it in for review.

Petitioners have not argued a constitutional question. A substantial constitutional question is not per se formed solely because the case resulted in the termination of parental rights. Simply because the Petitioners had their parental rights terminated is not in and of itself a compelling reason for this Court to review this case. Therefore, the Petition should be denied.

However, responding to Petitioners' argument, reasonable efforts, or a reunification plan are not required when a juvenile court makes a disposition order pursuant to R.C. 2151.353(A)(4). *In re Baby Girl Baxter* (1985) 17 Ohio St. 3d 229, Syl.2. "It is well-established that where a children services agency seeks original permanent custody of a child pursuant to R.C. 2151.353(A)(4), the agency is not required to establish a case plan." *In re Baby Girl Doe* (2002) 149 Ohio App. 3d 717, 736, citing *In the Matter of Demetrius H.* (9 March 2001) 2001 App. LEXIS

1012, Lucas App. No. L-00-1300, unreported; *In the Matter of Misty B* (17 September 1999) 1999 Ohio App. LEXIS 4314, Lucas App. No. L-98-1431, unreported (further citations omitted).

Even though not required, the Respondent did demonstrate it made reasonable efforts to reunify the family. Petitioners inaccurately state "even prior to the adjudicatory hearing, the County had decided to move for permanent custody. So no matter what the Gravelles did to cooperate after the adjudicatory hearing decision, it would not have mattered." (Pet. at 18). The Respondent demonstrated reasonable efforts to reunify the children with Petitioners as testified to by employees of the Department and the Guardian ad Litem. These efforts commenced shortly after removal of the children and continued through the dispositional hearing, until the Juvenile Court terminated Petitioners' parental rights. The Respondent sought out relative placements, and attempted to provide services to Petitioners to correct what led to the removal of the children in the first place. Both the trial court and appellate court made findings of fact accordingly. *In the Matter of Mercy Anne G.*, Sixth District Court of Appeals, Nos. H-06-007-017, p. 33; *In re Mercy Anne Gravelle et al.*, Huron County Common Pleas Court Juvenile Division, DNA 2005 00056-00066, March 20, 2006, p. 8.

Overall the testimony was that neither of the Petitioners was willing to work with the Department or utilize any of the offered services in an attempt to reunify with the children. In particular, the testimony

of the investigator, Ms. Johnson and the Guardian ad Litem was that the Ms. Johnson had tried to prepare the case plan with Petitioners to get their input, make recommendations and give referrals for services. Petitioners were not cooperative in this process and refused to sign the proposed case plan, which stated a goal of reunification.

Additionally, Department caseworkers, Ms. Ringlein, Ms. Hess, and Ms. Keller all testified they went to the Petitioners' home to discuss a proposed updated case plan. At this meeting, Petitioners were unwilling to go over the proposed case plan, and would not sign the case plan. At this same meeting the caseworkers had requested permission to view the upstairs bedroom area of the home. The upstairs of the home was a major concern for the Department in that this is where the cages were located, as well as exposed wiring and smoke alarms without batteries. Mrs. Gravelle explicitly denied the caseworkers access to the upstairs, therefore the Department's efforts were denied.

The Petitioners denied many other attempts the Department made to attempt reunification. The Department offered services to the Petitioners to assist them to remedy the issues that caused the removal, to remedy the concerns that continued the children's temporary custody with the Department, and to assist Petitioners in compliance with the trial court orders. Ms. Johnson testified she tried to arrange visitation for Petitioners with Mercy Anne, the pre-adoptive child, but Mrs. Gravelle was unwilling

to schedule anything at the time. Ms. Johnson testified she left her contact information along with the Department's toll free number for Mrs. Gravelle to call and schedule at a later date. Mrs. Gravelle never contacted the Department to arrange the visitation. Instead a caseworker, after many left messages, was able to make contact with Petitioners and give them available dates for visitation. Ms. Hess, the caseworker specific to Mercy Anne, testified Petitioners never contacted her to arrange visitation. All of the visitations with Mercy Anne were a result of Ms. Hess initiating contact with Petitioners and extending an invitation to have a visit.

The Juvenile Court ordered visitation to be through the Middleground program (a court ordered visitation setting in a neutral location). Regarding Middleground visitation, the Department's testimony was the standard policy and procedure of the Department in scheduling Middleground visitation is the party requesting the visitation needs to initiate contact with the Department, be placed on the waiting list, if there is one, and check on the availability weekly to maintain placement on the waiting list. Even though Petitioners were granted Middleground visitation, they did not contact the Department to initiate such. However, the Department, making efforts to reunify the family, prioritized the case and contacted Petitioners to offer Middleground visitation at the next offered Middleground session. This offer was made to Petitioners even though there were families that had followed the proper procedures to be

placed on the waiting list for Middleground that had not yet had an opportunity to participate in the Middleground program.

Also, the Department made numerous attempts to gather some items from Petitioners the Court had ordered be turned over to the Department. The caseworkers testified their calls and letters to Petitioners went unanswered and unreturned. The appellants did not bring the items such as vaccination records, coats and other personal items for the children, and some items used in therapy for Mercy Anne to the Department. Instead, the Guardian ad Litem testified she made contact with maternal grandmother to arrange for some of the items to be turned over. Other items were left on the porch for the Guardian to retrieve, but Petitioners refused to bring any of the items to the Department, despite a court order.

The caseworkers testified up until and including the date of the dispositional hearing they still did not have all the items requested by the Department and ordered by the Court to be provided by Petitioners. These were items that were of no use to Petitioners and would have benefited the children in their health, education, and therapy. This was considered by the court in accordance with R.C. 2151.419(A)(1) which states in part, "In determining whether reasonable efforts were made, the child's health and safety shall be paramount."

Further, in an effort to assist Petitioners, the Department volunteered to cover the cost of the court ordered psychological evaluation and sex offender risk assessment for both Mr. and Mrs. Gravelle. Upon agreement by all parties, the Court ordered the Department to provide Petitioners a list of three to five possible psychologists to perform the assessments. Petitioners were court ordered to choose one psychologist from the list and obtain the evaluation. Even though Petitioners submitted notice of their choice in psychologists to the court and counsel, they did not schedule an evaluation.

All of the caseworkers testified they had not received a psychological evaluation or a sex offender risk assessment for either Mr. or Mrs. Gravelle. Ms. Ringlein testified that she went over this specific court order with Petitioners at their house during a visit in late January, 2006 to ensure Petitioners understood what was expected of them. Ms. Ringlein testified she provided Mrs. Gravelle with a copy of the judgment entry from the trial court to verify the Department would be responsible for the cost of the evaluation. Moreover, Ms. Johnson testified she contacted the psychologist selected by Petitioners prior to the hearing beginning on February 22, 2006 and again on the day she testified and determined neither Mr. nor Mrs. Gravelle had been to the psychologist to have the evaluation or even contacted the psychologist to schedule the evaluation. All of the Department workers testified they had not received a

psychological evaluation or sex offender risk assessment for either Mr. or Mrs. Gravelle from the psychologist chosen by Petitioners, or any other psychologist for that matter.

Additionally, Petitioners refused to sign releases of information provided to them by the Department in an effort to help the Department work towards reunification. Ms. Ringlein, Ms. Hess, and Ms. Keller testified they provided the releases to Petitioners and they refused to sign them. Petitioners were required by court order to sign the releases based upon their indication they would do anything to assist in regaining custody of the children. The Department made contact with Petitioners at a later date and once again asked them to sign the releases. On yet a third occasion, while at the Department for visitation, Mr. and Mrs. Gravelle were once again given the opportunity, yet both Petitioners refused the numerous requests made to sign the releases.

There is not a specified period of time reasonable efforts, when required, need to be made prior to permanent custody. In this case, a reunification plan was not required; however, the Department continued to make reasonable efforts, up until the Judgment from the Juvenile Court granting permanent custody to the Department as the disposition on March 20, 2006. The efforts made for over six months were more than sufficient when the court concluded at a dispositional hearing the children could not or should not be returned to Petitioners within a reasonable period of time.

After hearing all the testimony, and considering all the evidence, including testimony from one of the children in question, as well as two adult biological children of Mr. Gravelle, the Juvenile Court concluded it would be in the children's best interest to be placed in the permanent custody of the Department. In accordance with R.C. 2151.414(B), the Juvenile Court ruled the children could not or should not be returned to Petitioners within a reasonable period of time and it was in the children's best interest to be placed in the permanent custody of the Department.

> The Court finds clearly and convincingly, however, that the Department *has* made reasonable efforts to prevent the continued removal of the children. . . . [Petitioners] lack of insight and understanding, as described above, supports the decision that the children cannot and should not be returned to the Gravelle home.

In re Mercy Anne Gravelle et al., Huron County Common Pleas Court Juvenile Division, DNA 2005 00056-00066, March 20, 2006, p. 8 (emphasis in original).

Permanent custody was appropriate based on factors considered from R.C. 2151.414(D). This decision was upheld be the Sixth District Court of Appeals. The Ohio Supreme Court declined to review the case.

Therefore, Petitioners fail to make any claims under the Fourteenth Amendment, under the Constitution or federal law. This matter does not present a sufficiently important federal question. Simply because the Petitioners had their parental rights terminated is not in and of itself a compelling reason for this Court to review this case. Therefore, the Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondent Huron County Department of Job and Family Services respectfully requests the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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